

The HOA Citizen

HOA Citizens are US citizens first!
December 2004



HOAs: Privatization of Govt

In response to an article, THE PRIVATE NEIGHBORHOOD, in REGULATION Summer 2004. It posed the question, "Will homeowners associations lead to a revolution in local government?"

power has been granted to HOA boards, who in turn cede the power to management companies and attorneys.

Here, in Harris County, Texas, we have been studying the problem since 1999. See our website. HOADATA.ORG.

We have done a conservative tally of HOA foreclosure filings from 1986 to 2001. We believe this is only a small fraction of the total. We have not included many condos and townhomes and no non-judicial foreclosures.

When you realize that each of these listings represents numerous fees, charges, liens and so many costs under so

many names to the attorney's advantage, you can see what a boon this is to greed and why the CAI lobby is so powerful at all of the state legislatures.

Privatization of government is one of the biggest scams perpetrated on our country. HOAs do NOT insure property values. The annual real estate listings reveal as much fluctuation in HOAs as in non-HOAs. One owner told me he bought his home in an HOA for \$20,000.00 less than the seller had paid. The market was down and the HOA surely didn't refund the difference to him. How did the HOA protect property value?

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The privatization of our neighborhoods is actually the privatization of our government, for Homeowner Associations to rule with the iron hand of tyranny. HOAs are touted as "democracy in action", but nothing could be farther from the truth. The real world reveals that many, if not most, HOAs are ruled by management companies and CAI attorneys.

Homeowners are controlled by fear, for total

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Please visit the nonprofit website for Citizens for Constitutional Local Government
[Http://pvtgov.org](http://pvtgov.org)
<http://pvtgov.blogspot.com>

PA HOA reform bill HB2461

“may impose a monetary penalty of not less than \$50 against any member of an executive board, committee or commission”



ADVOCATES TAKE NOTICE FOR YOUR UPCOMING LEGISLATIVE SESSION .

The Commonwealth of Pennsylvania is getting tough on HOA boards. Here's an excerpt of pending legislation from H B 2 4 6 1 :

(g) Filing of complaints.--A unit owner may file a complaint with the Bureau of Consumer Protection in the Office of Attorney General if an association either:

(1) fails to adopt

bylaws as required by this section within either 120 days after the termination of any period of declarant control of the association or 120 days after the effective date of this subsection, whichever is later; or

(2) violates any provision of this section.

(h) Penalties.-- (1) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all unit owners present and entitled to vote

at any meeting of

the unit owners at which a quorum is present, may impose a monetary penalty of not less than \$50 against any member of an executive board, committee or commission or other entity which is a subdivision of the executive board who participates in a meeting with the intent and purpose of violating this section.

Where does your state stand on these very important enforcement issues? If not, demand why not!

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New Florida law to cut legal costs

From The Sun-Sentinel, Palm Beach, FL



A Boynton Beach homeowners' association is the first in Palm Beach County to take advantage of a new law that limits the use of attorneys to oust a board of directors.

The law, which became effective Oct. 1, lets homeowners choose a liaison, which can be a fellow homeowner, to represent them in a recall effort. If a majority of homeowners vote for the recall, the liaison presents the ballots to the board, which can dispute the vote. An arbitrator is then appointed by the state Department of Business and Professional Regulation.

"What we intended to achieve was to avoid lawsuits," said Jan Bergmann of St. Augustine, who served on a statewide committee seeking to reform homeowners' association laws. "Many associations are paying upward of 50 percent of their dues for legal fees and management."

"Many associations are paying upward of 50 percent of their dues for legal fees and management."

About 65 percent of the 159 homeowners in The Colony at Boynton Beach, a neighborhood off Military Trail, voted to recall three board members on Oct. 18, but the board resigned before it could be recalled, former board member Dana Durrance said. She declined further comment.

Homeowner Raphaella Paternoster said the former board did not allow residents to look at financial records and would only communicate through a Web site.

"No one could speak at board meetings," said Paternoster, who is now vice president of the association. "They were very secretive." Residents also were angry about a new guard gate that cost \$126,000, according to board minutes.

In meetings over the summer, they complained about the cost of the gate; how the board was limiting how many visitors they could have; and that they should not have to show proof of insurance in order to get a gate pass. Paternoster said the former process for ousting a board required the board to call a special meeting, which the old board had declined to do.

"This new law helps homeowners who have dictatorship boards," she said. "It's a very smooth process and it gives the voice back to the people."

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Political action against HOA boards

“People feel powerless against the board and voiceless and they have nowhere to go”



From the Press-Enterprise, Coachella Valley, CA

A group of Coachella Valley residents is forming a political action coalition it says will help address concerns of homeowners who live in associations and common-interest developments.

About 80 percent of Valley homeowners are members of self-governing associations, said Madelene Patterson, one of the organizers of the HOA Voice Coalition, which met Tuesday morning at the Palm Mountain Resort in Palm Springs. Residents who have problems with their homeowners association boards or fall behind in their fees have few resources, and can lose their homes through nonjudicial foreclosure over a matter of several hundred dollars, she said.

"People feel powerless against the board and voiceless and they have nowhere to go," said Patterson, who had previously served on the HOA board in her Palm Springs neighborhood. "If you just keep your ears open, you'll hear the stories."

Indio residents Dennis and Shirley Bartlett were among the group of about six who gathered in Palm Springs on Tuesday. The couple, who are both blind and use guide dogs for assistance, gained widespread attention when

they filed a civil suit against the former president of their Desert Grove Homeowners Association for alleged harassment. The dispute centered on complaints that their dogs' droppings were not being cleaned up from the street, Dennis Bartlett, 49, said.

The couple lost their suit in small-claims court in Indio last month. Bartlett said that the compromise that was reached does not address the larger problem that the association's rules should be amended to accommodate service animals, he said.

"We're hoping that the coalition can gather enough strength ... to place more controls over these kinds of boards," Bartlett said at the meeting.

Organizers of the group say they plan to collect personal stories to share with legislators and elected officials. They also intend to lobby for a new version of AB 2598, which was vetoed by Gov. Schwarzenegger in September. The bill would have prohibited homeowner associations from foreclosing on a member who owed \$2,500 or less in back dues.

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AZ statutes: excessive punishment



“Excessive punishments ... has been found by the US Supreme Court to be an unconstitutional violation of the 14th Amendment's due process clause and a deprivation of property.”

Last year Arizonans finally received some justice with the passage of the watered-down HB2402 modifying ARS 33-1256 and 33-1807, Liens for Assessments. But homeowner injustice remains with the unconstitutional failures of due process protections and the unequal protection of the laws relating to the association's right to penalize and foreclose.

Under these two statutes and ARS 33-1803, Penalties (planned communities), the association is allowed to penalize homeowners who fail to make assessment payments on time with penalties and interest charges on these debts. It gives the false belief that the association had advanced its own funds to the homeowner and is now seeking a timely repayment. Such is not the case, for these associations do not advance funds nor is their primary business a lending or credit business.

Black's Law Dictionary defines a penalty as,

"1. Punishment imposed on wrongdoer, esp. in the form of imprisonment or fine.

2. Excessive liquidated damages that a contract [in our case the CC&R contract] purports to impose on a party that breaches.

'A penalty is a sum which a party ... agrees to pay or forfeit in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the

threat of which is designed to prevent the breach ...'

Excessive punishments, as in excessive punitive damages, has been found by the US Supreme Court to be an unconstitutional violation of the 14th Amendment's due process clause and a deprivation of property. (State Farm v. Campbell, 538 US 408 (2003)). Foreclosing on a \$200 HOA debt with over \$2,000 in attorney fees causing the homeowner to lose his equity in his home that can have a market value of \$120,000 or \$200,000 or even \$1,000,000, representing a 200x to 5,000x ratio of damages to losses, is extremely excessive. The Court offered a 10 to 1 or less ratio as acceptable ratios for punitive damages.

For these reasons, I ask that new legislation be adopted to remove these punishments, such as the right of the HOA to impose daily fines to the extent they become excessive, and the right to foreclosure as a remedy to collect assessments in arrears, as they are excessive punitive damages under the USSC guidelines of State Farm v. Campbell.

[See Nov. 2004 issue for information on USSC opinion.]

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Great communities require freedoms



The recent Tribune article on Arizona Great Communities still emphasizes property values over what really makes a community: the democratic and free exercise of the liberties and freedoms granted to all Americans.

In its criteria for the award, the Arizona Great Communities organization does have some worthy objectives: keeping reserves, informing members of who the officers and directors are and some "institutional" vendor educational requirements related to other

board/founder affiliations.

These organizations focus on the status quo and teach current topics on management that have proven ineffective over the years, when used alone and without any courses in government, people relations, statutory obligations of homeowners associations, or an understanding of contract law for directors of HOAs.

These are sorely and desperately needed educational reforms yet to be seen after years of bringing these major

deficiencies of HOA management to public awareness.

And why aren't these topics covered? Because the special interests don't want the public to know any serious problems with the loss of homeowners' rights or the overwhelming powers granted to the board with little protections for the homeowners.

It's time that these community oriented Homeowner Association organizations deal with the reality before them.

... HOAs: privatization of government

(Continued from page 1)



Since HOAs have total power, homeowners are often denied voting privileges and most other rights that Americans had considered their birthright. And most people don't have a choice when buying a home. Most available housing is now in HOAs.

In addition, this idea of "forcing" homeowners in non-HOAs to be subject to HOA rule if a certain percentage decide to force it on them and deny them their guaranteed constitutional rights certainly cannot be "the American way".

Since the founding of our country, we have fought for freedom. Our constitutional government with our guaranteed rights is our precious heritage. This has been an insidious takeover - a sellout by legislators to bills written by CAI lawyers. I, for one, do not plan to surrender to this CAI greed without a fight.

Beanie Adolph

Houston, TX

"Privatization of government is one of the biggest scams perpetrated on our country."

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North Carolina HOA legislation

WSOCTV, Charlotte, NC reports.

They've also filed a foreclosure notice, telling the Moorers that on December 15th just 10 days before Christmas,

It's all perfectly legal, but North Carolina's Speaker of the House Jim Black, one of the most powerful men in the state, says it may not be for long. "But to repossess a home, to foreclose on a mortgage, that sounds like it goes a bit far to me," said Black. He says, when the legislature reconvenes in Janu-

ary, he'll support new laws that could take away the ability of homeowners associations to use foreclosure to collect unpaid dues.

Charlotte attorney Tim Sellers knows and defends it. He's the lawyer for more than 500 homeowners associations and insists that without the threat of foreclosure, many homeowners simply won't pay their dues." I think the associations will be back with a high level of delinquencies. They won't be able to provide the maintenance. They

won't be able to keep up the amenities," said Sellers.

State Representative Beverly Earle disagrees. Ever since last Eyewitness News first showed her that Charlotte residents were losing their homes over homeowner's dues, Earle has been pushing for reforms.

"I've got staff looking at what other states are doing as it relates to homeowners associations and I do plan to introduce some legislation," said Rep. Earle.



"take away the ability of homeowners associations to use foreclosure to collect unpaid dues"

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European conference on HOAs

From a paper in the conference. Mainz, Ger

Dictatorial and oligarchic structures: In proprietary neighbourhoods, the former investors keep the majority of the property. Thus they are able to control the development of the open spaces, facilities and services as well as to manage the complex in a profit-oriented way. However, even in "normal" home owner associations the former investors often dominate the decision-making by keeping a part of the apartments or houses and/or by making use of the voting power of friends, relatives or employees. In view of these deficiencies it is hardly astonishing that studies in the USA and Lebanon have found a lot of conflicts within the private neighbourhoods. Consequently, the commitment of the inhabitants to their home owner association often is very limited.

FN11. In Arizona (USA) has been established an association who acts against the decision-making in many home owner associations judged as undemocratic (www.pvtgov.org/pvtgov, 2.12.2001).

[See web address below.

http://www.uni-mainz.de/~glasze/Publikationen/Glasze%20BelGeo%20Private%20Neighborhoods%20_%20Draft%20with%20figures.pdf]

The place just doesn't look nice

News-Herald, Cleveland, OH reports:

But some rules are necessary to bring up the appearance of the property and improve housing values, Glover argued.

"You can't let people put pink flamingos on their lawn and have 50 different styles," Glover explained. "The place doesn't look nice. If you want to paint your house with green polka dots, go ahead and buy a house."

But buyers typically don't get a copy of an association's CC&Rs until they close on their home or move in - when it's usually too late to back out. In addition, CC&Rs are often written in legalese, so a buyer may not understand the consequences of not abiding by the rules, said George Staropoli, founder of San Francisco-based Citizens Against Private Government.

"You need to know that you are essentially giving up your property rights," Staropoli said.



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