



The HOA Citizen

NJ bill S2016 protects homeowners

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Special points of interest:

- Foreclose on charitable pledges?" p5
- Should covenants by developers create private governments? P.7

NJ bill S2016 (2004), sponsored by Rep. Shirley Turner, amends the law to create a Common Interest Property Act. Here's the new Section 2 of that bill.

The Legislature finds and declares:

a. The form of home ownership in which some property in a development is owned in common by all owners in the development, such as condominiums, cooperatives and planned real estate developments, is the fastest growing form of ownership in the country, and widely used throughout New Jersey.

b. New Jersey, having attained the status of the most densely populated State in the country, should encourage the use of this type of property ownership, since it permits a high density of land use.

c. While this form of ownership offers many benefits to the owners living in these communities, such as pooled maintenance and management costs, owners in some of these communities are registering complaints that the governing boards of their homeowners' associations are not following proper business rules, their bylaws or democratic principles in governing the community.

d. Governing boards in many planned developments are requesting the same statutory governmental powers that have been granted by the Legislature to condominium governing boards, in order to reduce costs and more efficiently manage their common interest communities.

e. The very nature of a homeowners' association is to provide governance over and maintenance of the real property of a common interest community that is owned in common by all of the residents. New Jersey statutes require these associations to be formed by the developer, but have not provided the

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CA law commn. view of HOA problems

Community associations are run by volunteer directors who may have little or no prior experience in managing real property, operating a non-profit corporation, complying with the law governing common interest developments, and interpreting and enforcing

restrictions and rules imposed by a common interest development's governing documents. Mistakes and misunderstandings are inevitable and may lead to serious, costly, and divisive problems. The principal remedy for a violation of common interest

development law is private litigation. Litigation is not an ideal remedy where the disputants are neighbors who must maintain ongoing relationships. The adversarial nature of litigation can disrupt these relationships, creating ani-

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Comment on CO bill, SB 05-100

BILL HEARING FOR AN ACT CONCERNING INCREASED PROTECTION FOR HOMEOWNERS SB05-100

Date of Hearing February 9, 2005
Time: 1:30 pm
Committee: State, Veterans & Military Affairs

{Excerpt from testimony of Jan Jackson}

Here in Teller County, there appears to be a rising tide of those who would tyrannize all homeowners, if they could. They are called homeowners association (or common interest community) "boards of directors." The question many, if not all, homeowners who live in these homeowners associations ask is, "How can I stop the members of my HOA board from acting improperly -- administratively and operation-

ally?" These HOA/CIC homeowners concerns can be addressed by enacting SB05-100, as written.

How did they get away with doing such things for so long? Because THEY COULD. Many Ranch home and land owners were, and still are, simply scared to death of their boards of directors. Others continue to state their questions and concerns despite the adverse consequences they suffer by doing so. Others engage attorneys to represent them ... until they run out of money (they can't compete with the "deep pock-ets" (membership funds) that homeowners association boards have access to). Others are simply speculators (real estate agents and developers) who don't ask questions. Others are just venal power-and-money seekers who want in on whatever shenanigans their

respective boards are up to. Still others just move out. The rest, witnessing what happens to homeowners who rock the association boat, become apathetic, i.e., they shut up and pay whatever assessments are required of them.

Senate Bill 05-100 is now before the Colorado legislature. What it will do, when it is enacted, is begin the long, arduous legislative task of taking away the tyrannical power that homeowners associations' boards of directors have long enjoyed, and giving that power back to the homeowners where it belongs. It will help to stop many association board members from their ongoing tyrannical association activities.

Jan Jackson

“begin the long, arduous legislative task of taking away the tyrannical power that homeowners associations' boards .”



Calif. CID bills for 2005

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SB 137 (Denise Ducheny) Common interest developments: assessments. This bill would require the association to either file a civil action in small claims court or record a lien to collect delinquent assessments. The association would be prohibited from foreclosing until the amount equals or exceeds \$2,500, not including specified late charges and fees,

SB 551 Lowenthal - Common interest developments: bureau. This bill would add provisions regarding a Common Interest Development Bureau, that consist of a definition of that bureau.

SB 304 (Jim Battin)- Common interest developments: ombuds-

man. This bill would establish the position of Common Interest Development Ombudsman in the Department of Consumer Affairs, to be appointed by the Governor, to take and resolve complaints.

SB 186 (Jim Battin) - Common interest developments . This bill would prohibit the use of any funds of the association for the personal campaign mailings of any association official. The bill also would prohibit any mass mailing, as defined, by an association official or candidate for campaign purposes within 60 days of any election of association officials.

SB 61 (Jim Battin) Election - Common interest developments: elections. This bill would require that elections within a common interest development for specified matters be

held by secret ballot, as specified. The bill would prohibit a person from counting votes in an election in which he or she is a candidate. The bill would establish additional procedures for notification of elections and storage and review of election results, and would require that elections held by mailed, written ballot be conducted according to specified provisions. The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions by his or her association.

AB 619 (Tim Leslie) - Common interest developments: assessments.

Sources report that AB 619 (Tim Leslie) is a foreclosure industry bill and meant of kill SB 137 by Senator Ducheny.

The bills:

- election reform,
- foreclosure restrictions,
- Ombudsman

Vigilante HOAs to enforce junk vehicles

The Houston County News reports the following concerns relating to junk vehicles as a nuisance.

Montgomery County (TX) Commissioner Ed Rinehart said a proposition to impose a fine on junk cars seized on county roads failed to pass in 2003. Currently, there is not a separate county ordinance dealing with junked vehicles. The issue is addressed under the Montgomery County Nuisance Abatement Policy.

According to the county policy, if the junked car is not removed or fixed after 30 days, Commissioners Court will have a hearing. Additional time may be given to abate the nuisance. But if the junked car must be disposed of, the commissioner of that precinct will be responsible for assisting with the removal.

"The best suggestion I can give to a neighborhood concerned with this type of thing is to form a homeowners association," Rinehart said. "Those kinds of neighborhoods don't

have these kinds of problems."

This attitude by a municipal official reflects a delegation of public government responsibilities onto the private sector. In short, he believes that Texans should form their own vigilante governments and string up the dastardly culprits and make the community law and order abiding.

This is typical of the government's attitude that it has failed and looking to the private sector to help them out. One of the prime reasons for requiring HOAs is the inability of municipal governments to collect funds for all those programs that it feels should be done, and mandate that the HOA be responsible.

In this instance, the county has spoken and rejected an ordinance relating to these junk vehicles and, apparently, a few locals were not happy and want stronger enforcement. Well, why don't THEY move to another loca-


tion where there are ordinances against junk vehicles to their liking?

I'm not saying that there are no legitimate concerns relating to the care and appearance of neighborhoods, but unregulated private government with broad powers is not the answer. How about a simple neighborhood association that will report local ordinance violations, since the municipality claims insufficient resources to monitor all the ordinances?

Or simply, those not happy with the laws can move out to another locale. Isn't this what homeowners are told when they complain about the injustice and cliques that run HOA?

"Move out", say these boards and contented homeowners, "This is OUR community."

To what extent should any government regulate the likes, preference, beliefs or conduct of its people?



"but unregulated private government with broad powers is not the answer. How about a simple neighborhood association that will report local ordinance violations"



HOAs allowed to punish homeowners

The argument of unfairness to neighbors to justify HOA foreclosure lacks merit. The absurd enforcement of CC&R provisions that permit an HOA to foreclose as a remedy for failing to pay assessments is seen in the analogy of foreclosing on a contributor to a charitable organization for failing to honor his contractual pledge.

Proponents for the need to foreclose on a homeowner for failing to make his assessment payments have argued that 1) it would be unfair for one's neighbors to make up the short-comings in HOA revenues from their own pockets and 2) there is a compelling government interest in preventing the failure of the planned community as a result of the widespread or prolonged failure of homeowners to make their assessment payments.

However, there is no constitutional right for a planned community

to receive homeowner assessments, just a questionable contractual right supported in many states by statute.

All that we need to look at is the analogy of failing to make a pledge to a charitable organization, say the United Fund or to a public broadcasting station such as KAET in Phoenix.

Suppose that the pledge agreement contained a right to foreclose on the contributor's home if he fails to pay the pledged amount, either in full or by means of a partial payment arrangement. What would be the outcome?

Obviously, no one would make any pledges under these circumstances. Yet, because of the contractual arrangement, these charitable organizations could enlist the courts to enforce the agreement on the basis that they provide a solely needed benefit to the state or community as a

whole.

We ask, What damages would be suffered by the charity? What remedy, if any, would the charity be entitled to receive? The \$100,000 plus home for a \$100 pledge? For a \$1,000 pledge? Can the charity argue that this pledge is vitally necessary for it to achieve its charitable objective, for the benefit of the community, as set forth in its budgeted activities? Therefore, it is entitled to and has a right to foreclose? Suppose the pledge agreement also said that this provision could not be revoked for a period of 20 years? Would the courts enforce this provision? Would they see it as in the public interest?

No, this remedy won't fly either. But when it comes to such outrageous CC&R provisions and statutes, they are accepted and viewed as a fundamental right of the HOA.

“All that we need to look at is the analogy of failing to make a pledge to a charitable organization, say the United Fund or to a public broadcasting station such as KAET in Phoenix. . . . Foreclose?”



... NJ HOA bill protects homeowners

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necessary detail to guide these special corporations in carrying out their duties once the control of the community has shifted to the owners. Homeowners' association governing boards have relied on corporation law to fill in many of the gaps that the "Condominium Act," or other statutes, do not address. Corporation law, however, is geared towards businesses or charitable organizations. Homeowners' associations are technically not either; they are, in fact, the functional equivalent of neighborhood governments. Accountability measures are needed to ensure that such quasi-governmental entities are operating democratically and guided by principles of fairness that benefit all of the owner-members of these communities.

f. Accordingly, the Legislature finds it in the public interest that:

(1) common inter-

est community associations be held to standards of due process, open governance, democracy and fundamental fairness, similar to those to which governmental bodies are held;

(2) a uniform, low-cost, fair and efficient system for resolving disputes between owners and associations be implemented;

(3) associations be required to discharge their obligations to protect the health, safety and welfare of homeowners and manage their community property subject to the assistance and oversight of the State;

(4) a new type of corporate entity which embodies these standards, responsibilities and powers be created;

g. It is the purpose of this legislation to provide for specific powers and responsibilities for all types of owner-controlled homeowners' association boards, and to provide for increased State assistance

and oversight of these governing boards, in order to protect the rights of all homeowners in these communities to self-govern democratically, but without unduly impairing the ability of such associations to perform their functions.

"[HOAs] be held to standards of due process, open governance, democracy and fundamental fairness, similar to those to which governmental bodies are held;"



Equitable servitudes and HOA injustice

This is indeed the major inequity that gives the HOA its adhesion contractual powers and authority over our lives, far exceeding anything contemplated by the Old English common law of equitable servitudes -- aside from conscription of the vassal to his lord, or conqueror of the lands, to provide military service. (If you like reading Old English, see Blackstone's Commentaries on the Laws of England, circa 1765).

It's this power by which one person -- in the case of planned communities, a short-term profit seeking business -- binds and restricts the liberties of others forever more that makes HOAs an undemocratic form of government. Couple that with the use of constructive notice to bypass the contractual requirements of a give and take between the parties to a contract.

This current public policy view is further promoted by

the CAI's insistence that HOAs are not governments, but private organizations. To admit so, would be to completely remove all of the above arguments and restore the equal protection of the laws and a territorial form of government under the US Constitution.

... CA view of HOA problems

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mosity that degrades the quality of life within the community and makes future disputes more likely to arise. Litigation imposes costs on a common interest development community as a whole - costs that must be paid by all members through increased assess-

ments. Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws designed for their protection.

The proposed law would create the Common Interest Development Bureau within the Department of Consumer Affairs. The bureau would educate common interest de-

velopment homeowners and board members as to their rights and obligations under the law, provide informal assistance in resolving disputes, and as a last resort, enforce the law governing common interest developments.

[From CLRC 9/04 tentative proposal].



"It's this power by which one person . . . a short-term profit seeking business binds and restricts the liberties of others forever more"

"Many homeowners cannot afford to bring a lawsuit and are effectively denied the benefit of laws "



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Citizens for Constitutional Local Government
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AZ bill aimed at equal laws

Rep. Eddie Farnsworth, R-Gilbert, has again decided to take on what he sees as the imbalance of power between HOAs and homeowners' rights by introducing a bill [HB2630] that would restore the homestead exemption to protect homeowners in disputes with their HOAs.

Under the bill, HOAs would not be able to foreclose on someone's home for unpaid assessments and fees. They would have to wait to collect on a lien until sale of the home, like most other creditors.

It's a battle Farnsworth has vowed to wage for homeowners for some time, saying he wants to limit the power of what have become "quasi-governmental agencies."

"People shouldn't be homeless because they have weeds," Farnsworth has argued.

[From Arizona Republic article].

Citizens for Constitutional Local Government

[Excerpt from Carroll County Times (MD) article by S. Snyder]

The CCRs and fines for non-compliance can vary from one association to the next. And many even have to power to foreclose on a home if the owner or owners fail to pay dues or comply with the CCRs.

For George Staropoli, that makes homeowners associations essentially tantamount to

small, private governments that take away their members' rights.

"We have a substantial number of people being governed by contracts that are outside the U.S. Constitution," said Staropoli, the founder of the organization Citizens for Constitutional Local Government.

The problem, according to Staropoli, is that there are no rules governing how homeowners associations must be run or

organized. Unlike municipal governments, homeowners associations don't have to hold open meetings or provide access to documents.

"There are no checks and balances on them," Staropoli complained. "They're a corporate form of government."

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