

The HOA Citizen

HOA citizens are US citizens first!

Juy 2003

Vol.1 No. 3

AZ Real Estate Dept still wrong!

Dear Commissioner,

Thank you for removing the misleading information on Homestead protection that does not apply to all homeowners. However, I am disappointed that there is no "correction" notice to clarify the error, or a statement to inform buyers that there is indeed no homestead protection for homeowner association buyers.

I find the Department's attitude with regard to HOAs very selective. Here's part of "What does the Depart-

ment do?" on your web site:

Inspects subdivisions to determine general compliance with representations made to the public and to the Department.

Issues public reports for subdivisions and un-subdivided lands.

Suspends sales of lots in land developments where there is significant evidence of a violation of state statutes.

Issues cease and desist orders in incidents of illegal subdividing, and unlicensed real estate,



Do I need a homeowners association?

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Fly the American flag proudly! You can, you can't ...

Following 911, there has been an outcry by homeowners who have found that their homeowners association have objected to flying the American flag. Many homeowners have served our country in its wars and others have lost relatives

and close friends. Yet, the almighty private contract interpretation, uber alles, of CC&Rs has completely dominated the rights of free expression.

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Critique of 1999 CAI homeowner satisfaction study

This survey can be found on the CAI web site under "Research Foundation, Research Projects". It contains the published results and questions asked.

From CAI's 1999 National Survey of Homeowner Satisfaction:

"Overall, Community Association members are very satisfied with the association in which they live. Because of this high level of satisfaction, 48% of Community Association members plan to live in a Community Association again, or plan to not move from their current community.

"The overall appearance of the community is the leading driver of most members wanting to live in a Community Association

again and of members' general satisfaction with their community.

"The financial attributes, location of the community, and responsiveness of the Community Association are the factors that are the significant drivers of members not wanting to sell their house under any economic circumstance."

Methodology

Interviews were conducted with 401

homeowners who currently live in a Community Association to assess members' satisfaction with their community in general and specifically with their Community Association. In addition, 3,289 homeowners who do not live in a Community Association were interviewed for comparison purposes.

The surveys were administered by a team of Gallup consumer telephone interviewers in February 1999.

My comments:

Why didn't they simply ask, "Are you satisfied living in your HOA?" This could have then been followed by several questions as to why or why not. Instead, CAI proclaims that Q12 is an indicator of satisfaction and avoids asking the direct question. Q12 reads, "Based on your level of community satisfaction ... would you consider selling your home" and titles this question in their results as an "Indicators of Satisfaction".

3. Q10 asks, "Do you believe property values in your community are increasing rapidly, slightly ...". This question does not contain the important wording, "as compared to non-HOAs in your general community". The survey took place in 1999 and property values have been increasing, in general, for several years. Yet, CAI proclaims, "Eighty-five % of Community Association members believe the value of their home is increasing ... indicating that they feel the Community Association adds

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... still wrong

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cemetery and membership camping activities.

Why does the department not concern itself with the CC&Rs and homeowner association requirements in the purchase contract for property within subdivisions? Once again, important consumer information is being kept from the public by your department, a governmental agency.

How does the department reconcile the above selective activities with its mission statement stated on your web site:

"The mission of the Arizona Department of Real Estate is to safeguard and promote the public interest through timely and capable assistance, fair and

Northpoint Crossing at a crossing

The board and CAI management firm of this Phoenix, AZ POA have come up with a novel approach to to collect back dues and to "sue the b——s".

With no money available as a result of a suit against a homeowners, costing the association some \$20,000, and unable to collect the amount, the POA is broke. In need of cash, the board, under the control and guidance of the

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balanced regulation, and sound and effective education."

Where is the public interest being protected, unless special interest corporations are considered the public and not special interest lobbyists? The horror stories will continue and the Department's record in support of the real estate industry contrary to good public policy will continue until governmental agencies begin to protect consumers.

In fact, here's what the statute has to say, my emphasis:

ARS 32-2102. Administration of chapter by real estate department; purpose This chapter shall be administered by the state real estate department under the direction of the real estate commissioner. **The purpose of the department in administering this chapter is to protect the public interest through licensure and regulation of the real estate profession in this state.**

Please note that under the previous Commissioner the mission statement of the Department read, "to protect the consumer". Why the change to "fair and balanced regulation", when such regulation is neither fair nor balanced?

George K. Staropoli

June 2, 2003

AZ R.E. dept replies

Mr. Staropoli,

Thank you for writing to the Arizona Department of Real Estate. Commissioner Elaine Richardson forwarded your email to me for a response. I will attempt to respond to your concerns listed in your most recent email dated June 11, 2003. .

Special points of interest:

This reply does not address the use of an HOA management, educational firm and their resistance to providing an advocate's web site on their web site.

The writer also ignores the fact that the CC&Rs are inadequate in describing many of the material facts being withheld from buyers, while denying any conspiracy of silence.

By statute, our Department is required to make sure that **copies** of the CC&R's are included with the subdivision application. You can see clearly that the statute does not describe or provide for any checking, revision, or any other requirements for those CC&R's, except for that they must be included in the notice. That is all. ... there is no conspiracy to "keep information from the public."

In reference to our mission statement, "to protect the public interest through licensure and regulation of the real estate profession," we have a charge to protect the public interest, but only in areas in which we have jurisdiction. Homeowner's associations are not, by statute, included in our area of jurisdiction.

We occasionally receive calls with com-
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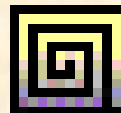
Who's my lawyer?

The Arizona Rules of Professional Conduct for lawyers says, in part, ER 1.13:

"(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization."

This says it all. First, let me make it clear that the HOA attorney represents the association and not the board. The association is his client. **The attorney does not represent you, the homeowner!**

Second, how can an association board member, who willingly violates state laws and/or the governing documents be construed as acting in the best interests of the association? The attorney must inform said violator or withdraw as the attorney. He cannot act to support such violations, thereby violating this rule.



... Fly the American flag proudly!

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In spite of recent legislation by several states, associations have found “legalities” and loopholes to get around the legislation. It is obvious that the spirit, if not the intent, of the legislation is being ignored by organizations that see themselves as private fiefdoms, answerable only unto themselves.

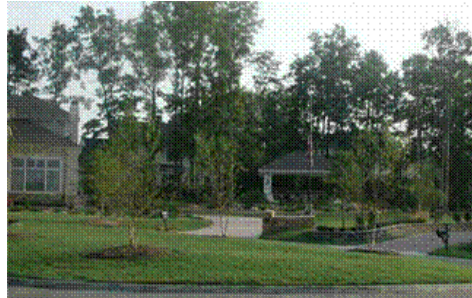
“Can’t fly the flag from a flagpole” is one excuse, since the association has the right to control the appearance of the community in order to maintain property values. Another excuse is that the CC&Rs “not alter the exterior of the lots”, whatever that means.

Shu Bartholomew, host of the talk radio show on HOAs, *On The Commons*, available online, remarked in her interview with attorney Frank Silver, they “are not attacking flag flying per se, but using other excuses”.

Several years ago, Dr. Wussow in Arizona lost his home fighting for his right

to fly the flag. He lost. But that was before the new legislation.

More recently, we have several cases, among them in the states of Illinois, South Carolina and the Richard Oullton case in Virginia and the George Andres case in Florida, as examples of the resistance to this legislation.



Where’s the flag ??

Barry Silver, Florida attorney helping George Andres, during his interview with Shu Bartholomew, said the Attorney General argued the case for Andres. According to Silver, George obtained approval from the previous presi-

dent and the new president, with whom there was some “history, decided to ignore the approval and brought suit.

At the appeals levels now, Governor Bush raised a flag that flew over the state capitol and contributed to the \$100 a day fine being levied on George. The courts granted him a temporary restraining order. And the legislature passed a law in favor of

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... flying the flag

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George's case.

But, did any of these actions help show the association board that maybe they were out in left field, outside the values and views of the greater community that grants them their rights? No! the case is continuing.

Oulton fought in Vietnam. He was a survivor of a Marine battalion that lost some 5 of its soldiers. He vowed to fly the American flag over his home with a monument in honor of the "Walking Dead Marines" Battalion, as it became to be known.

As reported by Shu Bartholomew, the Oultons, Having exhausted every avenue of appeal, the Oultons ultimately lost the battle to keep their flagpole on their property. The Virginia Supreme Court's opinion, that people who live in homeowners' associations have very limited freedoms and property rights, was echoed by the United States Supreme Court.

The Oulton's were ordered to comply with the wishes of the association or be prepared to go to jail. They have been ordered to pay in excess of \$100,000 to cover the association's costs, with another \$42,000 to be decided by Judge Harrus. Included in that award is several thousand dollars to hire a bulldozer, dump truck and several Henrico County Police to remove the flagpole and the flag -- by force.

You can't help wondering why the insistence on preventing a display of patriotism and national support. Why are these homeowner associations so obstinate in their opposition?

Could it be a power play that has the backing and insistence of the real estate special interests, the trade groups? Could it be the realization that if they lose this issue over constitutional rights versus unconscionable contracts that the homeowner association model of housing will collapse like a house of cards?

... Northpoint POA

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CAI management firm, Rossmar & Graham, had decided to file liens and threaten suits against four homeowners. One is a widow and is handicapped.

Yet, there is an outstanding issue regarding several board members who voted that they are exempt from paying assessments. Realizing the error of their ways, they began paying dues again, but have made no attempt to pay back dues. Both the current board and management firm have resisted actions to obtain these back payments.

But, these poor homeowners are fair
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... AZ dept replies

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plaints about homeowner's associations, to which we explain to callers that we have no jurisdiction to regulate homeowner's associations. We also explain that callers must seek relief through the court system, since there is no other regulatory agency for homeowner's associations. In addition, we have been referring callers to the National Institute of Community Management for further help.



I want to improve my property value!

Mr. Staropoli, if you are interested in changing the responsibilities and the jurisdiction of the Arizona Department of Real Estate, I suggest you look to your elected officials to introduce new legislation to change the current statutes and create

more government. We simply have no current enforcement authority at this time over homeowner's associations.

Sincerely,

Liz Carrasco

Public Information Officer

Arizona Department of Real Estate

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game. How did they manage this without money? The management firm hired an hourly attorney from a CAI member firm, paid by POA dues. That's how!

... critique of study

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value to their home".

5. Q2 was asked only of non-HOA homeowners. It was an open ended question asking, "why did you not choose to live in a community association". The only result published with respect to the open ended responses was the unsubstantiated "because there was no community association around". Was this "most common" reply just 50%, 20%, or 10%?

Results that were not published

6. Q35 asks, "How well did you understand the community's covenants, rules and restrictions before buying?" There was a ranked response list from "extremely good" to "don't know". Q36, however, was published. It asked a similar question, referring to the respondents knowledge as of now.

7. Of the 3200 odd non-HOA homeowners, only 2 of the 39 questions were asked of them which were not published. THIS IS A STUDY OF SOME 400 ASSOCIATION HOMEOWNERS.

8. Q1 was only asked of non-HOA homeowners. It asked, "what is your opinion of the neighborhood you live in" Its results were not published.

The full critique can be found at <http://www.ahrc.com/new/index.php/src/news/sub/letter/action/ShowMedia/id/272>

National Coalition for Homeowners Rights

A limited survey of 72 persons interested in HOAs was conducted via the internet. In brief the questions were:

Q1. Told about loss of rights?

Q1a. Bought home regardless?

Q2. Is HOA a government?

Q3. Were you fined, etc?

Q4. Is HOA a CAI member?

Questions of valid CC&R contracts and marketing practices

The lead question, Q1, "were you told about your loss of rights" is as expected with an 83% NO. A similar question on CAI's 1999 survey, "how well did you understand your CC&RS", did not have any results published. Nor did CAI publish answers to its question to non-HOA homeowners, "how well do you like

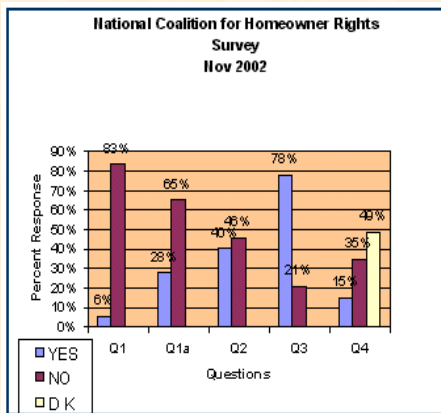
your neighborhood?"

The high NO response to this question cannot be logically related to the high response to Q3, "having had a problem with your HOA". You cannot establish a "driver", as CAI has used the

term, between having a problem and not knowing that you lost your rights when you bought your home.

This survey result does raise the question of the validity of the CC&Rs in regard to the requirements for a valid contract: "a meeting of the minds" or "informed consent". This leads to the logical follow up question of, "Why aren't home buyers so informed?"

Details of the study can be found at <http://pvtgov.org> and clicking on Publications/Reports.



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