

The HOA Citizen

HOA citizens are US citizens first!

August 2003

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HOA management practices law

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Editor's Note: Jan Bergman, president of CCFJ in Florida, reported on his investigation into liens filed against a homeowner by an HOA a management firm. The president of the firm is also the CAI chapter president. Bergman writes:

A lien on a home in a homeowners' association plus the threat of foreclosure finally caused a homeowner to check some documents.

Annoyed about the mistreatment by a Community Association Manager, somebody finally did some research and discovered that the management company had created another great source of income by filing these liens. Obviously, members of Leland Man-

agement, Inc. of Kissimmee, Florida established a booming business from filing liens and preparing the releases of liens or "satisfactions."

According to the Florida Supreme Court, this constitutes Unlicensed Practice of Law (UPL). One of Leland Management's employees, Richard Murphy, [filed a lien](#) against a homeowner in Chapman Groves HOA, Inc. According to a statement from the

homeowner, Richard Murphy explained that the extra [\\$125.00 on the billing statement](#) was for "legal fees for the attorney who prepared the lien." But it turned out that **no attorney** was ever involved in this lien, nor in many other liens filed

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Association problems making national news

ABC's 20/20 ran an update to its segment last year that dealt with Richard Glassel shooting of HOA board members and the Robert Oulton flag flying court case — his tribute to his "walking Dead Marines".

The Oultons lost their request to be heard all the way up to the US Supreme Court, and he still owes the debt in spite of the laws allowing homeowners to fly the flag. It appears

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Creating HOAs and state actions

We need to publicize to everyone the difference between the real estate "package" of a planned community from the governance of the planned community, the private government homeowners association. By doing so,

we support the right to planned communities while opposing the undemocratic form of governance. Planned communities can be governed according to the democratic principles of this country.

In this respect, what right, what authority does the local planning board -- that approves subdivisions and planned communities -- have in requiring a separate private organization to govern these communities? As

an example, the approval of a subdivision in Gilbert, AZ states, "shall have a homeowners association". Yet, the Arizona Constitution says,

"Title 4, Legislative Department, Section 19, Local or special laws - No local or special laws shall be enacted [... Line 13] granting to any corporation, association or individual any special or exclusive privileges, immunities or franchises."

State constitutions contain mechanisms whereby villages,

towns, cities, etc. can be created, all of which require the vote of the residents affected by this creation of a new municipality. Yet, the planning board so creates the homeowners association to govern and absents itself from any responsibilities and oversight obligations, contrary to existing laws relating to the privatization of governmental functions.

Again, Arizona as an example, the Appeals Court (McLoughlin v Pima County, CA-CV 2001-0198) wrote "it is a well established theory that a legislature may not delegate its authority to private persons over whom the legislature has no supervision or control [...] The Legislature cannot abdicate its functions or subject its citizens and their interests to any but lawful public agencies, and a delegation of any sovereign power of government to private citizens cannot be sustained nor their assumption of it justified".

The 9th US Court of Appeals found, Lee v Katz, 00-35755: "State action may be found when private individuals or groups are endowed with governmental powers or functions because they in turn become state agencies or instrumentality's". Under the USSC Brentwood Academy v Tennessee School, 99-901, ruling for determining state actions or actors, "we have found a private organization's acts to constitute state actions only when the organization performed a public function; was created, coerced or encouraged by the government".

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Special points of interest:

The 9th US Court of Appeals found, Lee v Katz, 00-35755: "State action may be found when private individuals or groups are endowed with governmental powers or functions because they in turn become state agencies or instrumentality's".

... practices law

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by Leland Management employees!

A complaint to the Florida Bar quickly exposed the real truth behind this ongoing violation of Florida Statutes. [In another letter](#) to the Florida Bar, explaining the reasons for his violations of Florida Law, Richard Murphy tried to blame the homeowner, by stating (quote): With regard to the complaint by Ms. XXXX, she has repeatedly not paid the Association Assessments and this complaint is one more issue in an effort by Ms. XXXX to cause the Association additional expense because the Board of Directors has not allowed her dogs to run loose in the community.

Pretty obvious the Bar Counsel didn't fall for all his excuses, because on June 18, 2003, Richard Murphy signed the

Cease and Desist Affidavit, the normal way the Florida Bar treats offenders in cases like this. In her [letter to Richard Murphy](#), the Bar Counsel Ghunise L. Coaxum made it very clear that his previous conduct will not be tolerated in the future and he is ordered (quote): to agree not to engage in any activities which constitute the unlicensed practice of law under existing decisions of the Supreme Court of Florida.

CAMs who violate Florida laws should never be allowed to supervise homeowners' finances. During the last legislative session, a bill was hotly debated to deregulate Community Association Managers. The bill finally died. But how helpless do our legislators want to leave Florida Homeowners and Condo-owners? Even when CAMs are regulated by the DBPR [state agency], all these problems still occur all over Florida.

Create HOA anytime?

Lisa, a West Virginia homeowner is puzzled by an attempt by a resident, a self-appointed HOA president, to create an HOA.

She writes, "A neighbor and I are preparing to hit them with the facts, which is this "association" cannot be legally formed. We thought that we would allow the "president" to first reveal any information that he found in doing his "research" for incorporation, then, ask

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Imagine what would happen if this DBPR supervision falls by the wayside?



CAI Rights & Responsibilities pledge

Community Association Institute has a new drive, what some advocates call a new cosmetic approach to peace and happiness within homeowner associations: their Rights & Responsibilities pledge. Some see it as an acknowledgment that there are problems in HOAs.

If one were not familiar with CAI's practices and propaganda, one would believe that CAI is a good, positive influence for HOA boards. But, alas alack, it's not so.

"shouldn't CAI fully support any legislation which would mandate these "Responsibilities" via state statutes? One would think so but, CAI has consistently opposed previously proposed legislation which would do so."

CAI has for years strongly opposed any meaningful revision to state laws to provide for appropriate sanctions against many HOA boards, those rogue boards, those lawbreakers. CAI can back legislation to put an end to these HOA by calling for fines and penalties against law-breaking directors, to

urge a full disclosure to new home buyers, etc. But, no, they have strongly opposed such meaningful legislation in every state that would make this simple pledge unnecessary.

Do you think a lawbreaker will honor such a pledge? No. This is more propaganda by CAI.

And what's more distressful, CAI practices "not my problem" when it continu-

ally ignores the horror stories told by homeowners who have no protection from rogue boards. No, CAI's concern is for the law abiding HOAs and any homeowner abused by rogue boards, well, "let them eat cake" is its attitude. Definitely not a proper or positive civic or community attitude.

Don't be misled by what CAI proposes in view of what could be done, today.

Another active advocate further comments on the HOANET email list. Keith writes: MY VIEW OF CAI's "RIGHTS & RESPONSIBILITIES":

If you examine the "Responsibilities of the Homeowner" you'll see that virtually all items are mandated via an association's CC&Rs or state statute.

Now if one examines the "Responsibilities of Community Leaders" (aka the Board of Directors) the same is not true. Of the seventeen listed [in their pledge] only two are mandated via state (AZ) statute, and then only in part.

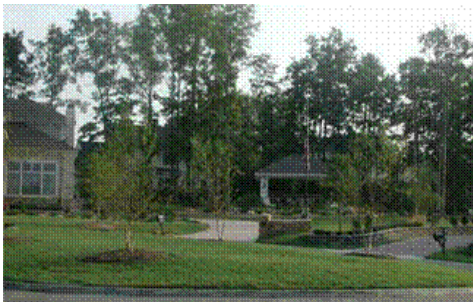
CAI is stating that these items are viewed by their organization as being required on the part of members of an association's Board of Directors. Therefore, logically shouldn't CAI fully support any legislation which would mandate these "Responsibilities" via state statutes? One would think so but, CAI has CONSISTENTLY OPPOSED ANY previously proposed legislation

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... national coverage increases

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that the flagpole, not flag flying in itself was a “visual nuisance” coming under the association’s rules; and that it was also considered a structure rather than flagpole, also coming under the association’s rules.



Where’s the flag ??

As Jon Stossel of 20/20 said, “C’mon, give me a break”.

The Glassel incident was also mentioned as an extreme case of problem solving, with Glassel getting the death penalty.

The New Times reporter, Motoko Rich in her July 27 article, has been talking to many, many people as she conducted her detailed research into homeowner association problems across the country.


It’s revealing of the attitudes of these rogue boards when she writes that the HOA president only sees a personal problem with her neighbor. There is nothing said about homeowner rights violations. The president seems upset that she must be accountable to the homeowners, typical of these rogue BODs.

Now, no longer do the special interest groups like CAI dominate the news coverage regarding HOAs. Now, the other side, the side of the homeowners, can be heard and is being actively sought by the national media.

HOA — HO conflict

Why do we see homeowner association boards opposing legislation that would benefit homeowners? We saw this in Florida, Texas, Arizona, Washington and California. They echo the position of CAI, the trade group.

Don’t they realize that they have a fiduciary duty to the homeowners and not the special interests? Was their vote approved by their membership?

As an example, this year, BODs and CAI members in Arizona opposed restoring the homestead exemption for homeowners in HOAs, taken away by CAI legislation in 1996. 

Advocate seeks meaningful changes

[**Editor's Note:** The following is an excerpt from the July 14th issue of the *Arizona Capitol Times* article by Don Harris, "Emotions Run High Over Homeowner Associations".]

One local HOA critic is George Staropoli, president of the Citizens Against Private Government HOAs, based in Scottsdale.

Mr. Staropoli says his nonprofit organization (www.pvtgov.org) provides "full and material disclosure of all the factors that can have profound effects on your decision to buy into an HOA controlled property." He notes that an HOA is a private, nonprofit corporation that is subject to corporation laws and not municipality laws.

On his Web site, Mr. Staropoli says, "The HOA is allowed to bypass fundamental governmental protections, including due process against arbitrary actions and the equal protection of the law for homeowners who have grievances against their board of directors."

Three fixes are needed to better serve homeowners, he says. They are:

- * Restore homestead protections.
- * Get rid of or restrict foreclosures. CC&Rs are interpreted as a contract. Mr. Staropoli says it's an "adhesion contract," similar to a non-negotiated guarantee or warranty that a person receives

after buying an appliance. Such contracts, he says, give one party tremendous power over the other party. "It's unconscionable and against public policy," he says.

* Require full disclosure of documents. "There is nothing in the CC&Rs that tells you the impact, that you lose your constitutional rights," Mr. Staropoli says.



... create HOA

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him what the WV statutes say.

Well, we had our "board" meeting last night. Once a few of the others heard this information, they became vocal - questioning why they had not known about the CC&R's, and why they did not receive a copy when they purchased their home.

The developer will need to "turn" the road over to the city, since we have not incorporated and formed the HOA. (long story, but it should have been done in 1996 and he didn't do it.) In our area, we need 51% of the

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... responsibilities

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which would do so.

So why does CAI propose and support legislation which only seeks to codify the responsibilities of the homeowner and vehemently opposes any legislation seeking to do the same with regard to the responsibilities of the board of directors?

WHY? BECAUSE CAI REPRESENTS AND PROMOTES THE INTERESTS OF ITS MEMBERS. Not the interests of associations and not the interests of homeowners. CAI states "CAI was founded in 1973 as a multi-disciplinary non-profit alliance serving all stakeholders in community associations." And that "Our mission is to assist community associations in promoting harmony, community, and responsible leadership. Perhaps at its inception this was the intent but, no longer.

Of course, CAI could prove me wrong. They could simply propose legislation which mandates the "Responsibilities of Community Leaders" via statute. But it might be awhile. Because historically the ACTIONS OF CAI have consistently shown that, regardless of what they say, they consider only one group within an association to have "Responsibilities" -- the individual homeowners. A more appropriate title for their program would be:

"They're Right and You're Responsible"



... state actions

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Including such a complaint of state actions or actors in any law suit will surely bring into play some very important issues of law. Filing such a complaint as part of your case, we may be able to get assistance from those constitutional rights organizations to help fight for our cause.

The goal that will be achieved is the recognition that homeowner associations are state actors and subject to the due process and equal protection of the laws clauses in the 14th Amendment.



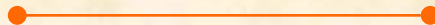
My home is my castle!

... create HOA

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homeowners agreeing to the annexation and it can be done.

I would say that the majority are supporting the idea of annexation of the road to the city and being "neighbors", although 2-3 people still believe that an HOA increases property value. I encouraged people to educate themselves by reading some of the horror stories. Lisa J.



Book Review: state protection of HOAs

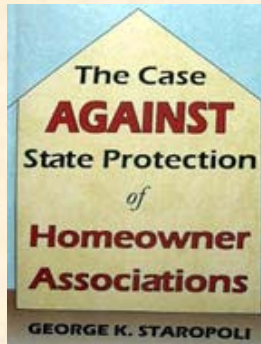
Over the past forty years there has been an ever-increasing dispersion of a new social order in America. Its roots are founded in the spread of planned communities and its model of community governance that is an undemocratic, police state insistence on conformity to rules set through the façade of democratic institutions, much like those we are familiar with in regard to those “Peoples Republics” throughout the world.

Each day, more and more children are living under and learning about this form a private government that does not respect the beliefs, rights and freedoms for all citizens underlying the US Constitution and US Bill of Rights.

In this book, *The Case Against State Protection of Homeowner Associations*, the author, George K. Staropoli, reveals his naïve attempt over 3 years in Arizona to call attention to the acceptance, encouragement and defense of these private government organizations by state legislatures, state agencies such as the real estate departments, the builder and real estate agent trade groups and sadly, the media that still refuses to present both sides equally.

This book documents the harsh reality that

our state governments have abdicated the values, beliefs, principles and laws that made America stand out alone as the model of good government; that special interest groups have promoted their views of this social order while hiding the other side of the coin



Staropoli provides substantial documentation relating to violations of US and state Constitutions and statutes; US Supreme Court and Arizona and other state Supreme Court rulings directly bearing that fundamental American values, beliefs and principles play second place to this overriding “state” objective of these planned communities.

This is must reading for anyone seeking a new home, for students of government, for political theorists and scientists, for historians, for government officials and for the judiciary.

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