
The HOA Citizen

HOA citizens are US citizens first!

Links to other stories:

[On private governance](#)

[HOAs and affordable housing](#)

[What Americans believe, but don't understand about HOAs](#)

[HOAs and quasi governance](#)

[Join The Fellowship of the Community](#)

Panic and the 'no exit' factor

Chicago's CBS5 News reported that "a man reportedly evicted from his condominium allegedly went on a deadly shooting spree in Franklin Park Tuesday."

"The tenant was asked to leave," said Franklin Park Deputy Police Chief Jack Krecker. "He was upset about leaving. And there's one confirmed death, and that's the secretary of the condo association."

Sometimes the choice is not socially acceptable. See this heading in *Villa Appalling!* by Vanitizian & Glassman.

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StarMan Publishing, LLC, Publisher
The HOA Citizen
ISSN # 1550-0292

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[Home Page](#)



On private governance

[The following are comments from Fred Pilot on the HOANET email list].

I don't see the need for compromise as I don't see conflicting positions. Property owners within existing common interest developments are free to petition on their own accord for local government annexation or to reorganize their CIDs [HOAs] as special districts or municipalities. (In some states they may need legislative approval to do so.)

Let those who truly understand and prefer private local government by HOA (which I would guess is perhaps about only one out of 30 homebuyers) to have the debate among themselves about what legislative reforms are needed for CIDs. Most homebuyers really aren't that concerned about it because they don't want private government in the first place. So they aren't going to work for reforms, which appears as apathy to many. It's not apathy. More accurately described, these folks simply were never and still aren't interested in private local governance.

After a decade of reading published materials and observing the ongoing debate over homeowners associations, I am convinced one of the reasons the subject is so vexing and never seems to move off dead center is because some fundamental realities are being largely ignored.

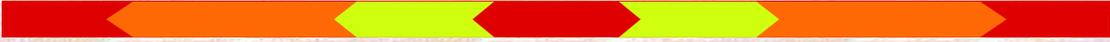
Most prominently, that private local government has met with a longstanding lack of public understanding and acceptance since the 1960s when it was introduced on a large scale. (Which led to the formation of CAI in 1973). It is not for everyone. In fact, it's not for most folks. Also, that traditional local government is failing to the extent it is privatizing *basic governance functions and policymaking* rather than *discrete governmental services*. The implications of both are profound.

It is also my observation that one of the key reasons the public debate seems to go nowhere is that the subject of local government privatization is highly complex and needs to be broken down into manageable components that can be rationally debated and discussed.

"In the final analysis," as President Kennedy might have said had his administration taken a closer look at the "homes association" concept that was readied for the mass market during his administration, the question is how do we want to govern ourselves at the local level and how do we want to finance it? Publicly with taxes or privately with HOA assessments?



[Home Page](#)



HOAs as quasi governments

Actual testimony is shown relating to private HOA governance and the typical attitude of a board member relating to an understanding of his obligations under unregulated HOA governance.

The following is an excerpt from the testimony of an expert witness relating HOAs and quasi governance.

Q. What is your opinion regarding residential common interest developments in the United States?

A. ... This signifies a major shift in how property is controlled and governed and from public to private governance.

Q. Is this different across states?

A. In some states, a person intending to purchase a new home has no choice but to live in a homeowner's association which is virtually a private government.

Q. And by "private government" you mean ..?

A. I mean that larger homeowner's associations resemble municipal governments in many respects....

Q. What does this mean for us today?

A. The increase in homeowner's associations has significant implications for association residents, such as what federal and state protections are afforded on private property ... and the fundamental shift of regulation of property use by private government homeowner associations from local government.

Q. And this has become a concern nationwide?

A. Yes. Residents of homeowner's associations have instituted lawsuits when associations have gone too far and trod on property or citizenship rights.

Q. What is your opinion regarding [the as-

sociation]?

A. [Its] governing documents are geared to protection of property values in the area ... There is a balance between protecting the property values of the entire area and impinging on private property rights. Sometimes private rights suffer, supposedly for the common good.

Q. Does [the association] act like a private government?

A. Yes. The association provides many quasi-government-like services and is often confused with the county in who provides what services.

Q. Has [the association] impinged on private rights?

A. Certainly ... Sometimes these prohibitions are warranted, are contracted for with full knowledge, and other times it could be argued the association has gone too far.

Q. What is the future for large homeowner's associations?

A. Possibly large homeowner's associations should be considered a new level of government entity and be required to adhere to the obligations and responsibilities of public governments.

To put this into perspective relating to just what rights get violated through a disregard for the law and the overall guiding factor of maintaining property values, here's the BOD testimony.

The following is an excerpt from the testimony of an adverse expert witness, an HOA board member (an architect by profession):

Q. We've heard from [the association] that some signs are prohibited in homeowner yards, correct?

Continued on pag 7)

What Americans believe, but don't understand about HOAs

The average American believes that

- he lives in a democracy,
- * he has certain Constitutional rights and enjoys the same rights as all other Americans,
- * the government is here to serve the people and to protect their rights, and these rights cannot be taken away from him without his express consent,
- * the privacy of his home is protected,
- * the government will enforce the laws against any violator of the laws,
- * contracts require his signature and informed consent,
- * when he entered into an HOA controlled community that he was primarily buying a home with external amenities and maintenance requirements,
- * the homeowners association is answerable to the Constitution and to state laws, and will be held to the same standards of justice, of democratic and fair election procedures, of access to HOA records and to meetings of the governing board as found with public agencies,
- * the HOA board has a fiduciary duty to protect his rights foremost and to abide by the laws of the land,
- * the HOA attorney works for the benefit of the members of the HOA.

This is what the average American believes because no one has told him any differently when he bought his home in an HOA controlled planned community. Not the state or city, not the seller, not the real estate agent, not the developer, not the news media, not the Attorney General, not his attorney, not the real estate department, nor any other government agency.

- The average American does not understand that
- * he entered into a private agreement, the CC&Rs contract, that binds him to obedience to the restrictive covenants,
- * he is viewed as having willingly agreed to be bound by this contract and to all the consequences and future impacts on his lifestyle and finances relating to this contract resulting from amendments to the CC&Rs,
- * he has surrendered his rights and does not retain them, even though he still lives in America,
- * he no longer is protected by ex post facto laws, and therefore, there is no need for grandfathering clauses to protect him,
- * the HOA can take his property without compensation,
- * the HOA can obligate him financially without his consent,
- * he lives at the suffrage of the board,
- * his signature is not necessary to be bound to these covenants nor does he have to view or read them because, upon notification that there are restrictive covenants, just filing them with the county clerk's office legally binds him,
- * the courts continue to make rulings with consequences far beyond what he could have ever imagined when he bought his home,
- * and that these rulings appear puzzling and conflicting,
- * he has granted broad powers to the HOA board without any protections,
- * the HOA is not regulated by the state nor has it approved the governing documents nor sets any standards or "bill of rights" requirements to protect him,
- * the state will not interfere with the broad powers and goals of the HOA even if the HOA acts in an unjust or unfair manner, or denies him rights that he had under public governance,
- * he lives in a communal society that requires the participation of a sufficient number of neighbors

HOAs negatively impact affordable housing

The National Association of Realtors, NAR, publishes its Housing Affordability Index, HAI(1), with which it attempts to measure the ability of consumers to buy a home.

While this looks and feels good for home buying and the real estate industry, let's take a closer look at what the first time home buyer can afford. Let's ask what's the qualifying income in order to buy the lowest cost house in a particular area. And let's ask what is the impact of mandatory annual HOA fees on this minimum income requirement and minimum affordable home.

Do HOA homes permit more affordable homes in a very pragmatic sense than what some subjective view of what is a desirable home? Let's look at the nitty-gritty of FHA/Ginnie Mae/CAI/NAR/NAHB arguments that HOA housing is affordable housing.

The answer is an intuitive and correctly resounding NO!

For a simple answer with numbers, let's take the NAR figures for median income and the median price of homes. Using NAR's 2003 figures, we have:

median income -- \$53,463

qualifying income -- \$38,064 (requires an annual PMT of \$9,516)

median price -- \$170,000

A good estimate for our analysis is that an "entry" level home for a first time buyer in any region would be about 25% less than the median priced home. This would give us an "entry" house price of \$127,500 that would require a qualifying income of about \$28,548, or 25% less than the median qualifying income. So, using NAR's average figures, a first time buyer with an income of at least \$28,548 could buy an entry level home (this assumes as NAR does, that the 20% down payment of some \$25,500 is available).

Now let's assume the home is in a planned community with current annual assessments of only \$600 (\$50 per month). Anything less does not represent any amenities of benefit that would warrant the claims for having an HOA govern homeowners. Anything less would simply be, let's say, landscape maintenance which the homeowner could do for himself out of his own "sweat equity".

What impact does this additional \$600 have on the entry level home qualifying income? The NAR calculation only considers the mortgage payments and no other actual and required annual costs, such as the HOA assessment. But isn't the HOA fee a "hidden cost" that should and must be factored into the affordable home calculation, just as points, and PMI insurance payments? After all, we don't want the homeowner to lose his house because of inadequate income to pay the obligations on his home, do we? Shouldn't they also be included in the "truth in lending" calculations and made known to the buyer?

If we factor this additional \$600 into an additional income necessary to stay within the mortgage guidelines of 25% housing payments, as if the assessments were a part of the mortgage payments, we get an increase of \$2,400 added to the previously calculated non-HOA home. This amounts to an increased qualifying income for the same \$127,500 to \$30,948. Or, if we look at the impact of HOA fees by keeping the first time buyer income the same and reducing the amount available for a mortgage payment by the HOA fees, the house that he could afford reduces to only \$119,500, a reduction of some \$8,000.

Fellowship of the Community

You can show your support for the American system of government and your concern about the loss of our rights, freedoms and liberties that others not living in planned communities or Condos still enjoy.

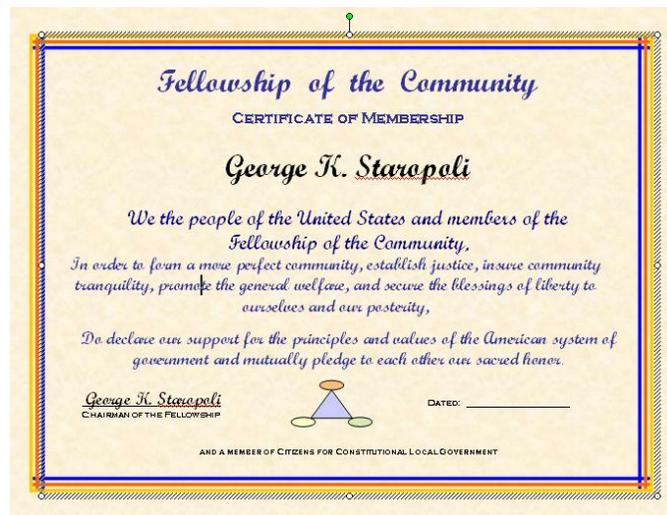
I have setup the Fellowship of the Community to foster these beliefs and you can join and receive a membership certificate by simply sending your email address. The certificate reads:

We the people of the United States and members of the

,

*In order to form a more perfect community, establish justice, insure community tranquility, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,
Do declare our support for the principles and values of the American system of government and mutually pledge to each other our sacred honor.*

Send your email address and the name you wish to appear on the certificate to INFO@PVTGOV.ORG.



The certificate also indicates that you are a member of

Citizens for Constitutional Local Government,

the renamed nonprofit organization formerly known as Citizens Against Private Government HOAs. Visit its site <http://pvtgov.org> for a statement of its mission.



... HOAs and quasi governance

A. Actually we have a board policy of prohibiting all signs.

Q. But the covenants provides an exception for directional and 'desirable' signs, isn't that right?

A. It's the board's policy to prohibit all signs. The aesthetics of the residential areas are very important and must be maintained. The underlying policy is to keep the area aesthetically attractive.

Q. I understand that isn't the only reason for this policy, isn't it?

A. I am not sure what you mean.

Q. Please turn to page [of a document handed to the witness to review] and read the highlighted portion.

A. We've had a problem with board members deciding what is and isn't a 'desirable' sign.

Q. You can't be saying it is better to ban all signs to keep the area attractive rather than let a homeowner express a political view, an important free speech right guaranteed by the Constitution, are you?

A. Well no, but you have to be strict with these people.

[American Jurisprudence POF 3d] *****

... what Americans believe

- to effect any changes or to right any wrongs, a level set above the norms for our society in general,
- * the courts will rule in favor of the greater benefit to the community, and that the maintenance of property values is given a primacy above the protection of his rights.

No, the average American doesn't understand these things, nor the legislators who make these laws as a result of special interest lobbying, nor the media either. But the special interest attorneys understand, and have for a very long time. *****

... affordable housing

By these simple numbers, or quantification, example we clearly see that living in a planned community increases the income needed to buy and live just as well, in terms of discretionary or leftover income, as compared to buying a non-HOA home. Or, alternatively, adding a mandatory "home" payment of HOA assessments to this "home" cost reduces the amount left for this discretionary income, so we just reduce the amount of mortgage payment to stay within the above guidelines of 25% for mortgage payments. This is the logic behind the 25% ratio: owning a home should not impact the usual family spending by more than 25% of the family income.

For each region or city, we can take those appropriate figures for the lowest "acceptable" or "desirable" priced home as we did above, and use the same 25% less than the average home as our entry level home. (These figures are generally available for all major cities and towns).

NAR data for HAI calculations

1. YEAR	PRICE	INCOME	Needed
2. 2001	147,800	51,407	37,872
2002	158,100	52,103	38,592
3. 2003	170,000	53,463	38,064