Unconscionable contracts and UCIOA

Keeping the ball rolling on public policy and unconscionable contracts, here's a California case and a UCIOA excerpt of interest.

A very good opinion on the use of adhesion contracts is given in Pardee vs. Rodriquez, D039273, California Court of Appeals, that relates to "hidden clauses" that involve the surrender of a buyer's right to trial by jury. This instance involves a purchase and build out of a home. The court said,

"The first is that such a contract or provision which does not fall within the reasonable expectations of the weaker or 'adhering' party will not be enforced against him. The second — a principle of equity applicable to all contracts generally — is that a contract or provision, even if consistent with the reasonable expectations of the parties, will be denied enforcement if, considered in its context, it is unduly oppressive or unconscionable. Subsequent cases have referred to both the 'reasonable expectations' and the 'oppressive' limitations as being aspects of unconscionability.

"And the agreements in their entirety were contrary to the public policy against compelling homeowners to submit construction defect claims to alternative dispute resolution."

Now, just look at the special interest groups' efforts with respect to the **Uniform Common Interest Ownership Act, UCIOA, Section 1-112, Unconscionable Agreement or Term of Contract.** It says,

"(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract …
(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to …."

"And the agreements in their entirety were contrary to the public policy against compelling homeowners …"

In short, the special interests well knew about unconscionable CC&Rs and acted to protect CC&Rs from such a categorization. The remainder of Section 1-112 goes on to set the conditions by which the courts can judge a contract as unconscionable, much like the restrictions regarding access to the HOA's records.

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The HOA Citizen

HOA citizens are US citizens first!

January 2004

eNewsletter

Inside this issue:

Can HOA legal model be reformed?

I must once again present an alternative view of working for HOA reforms that have been denied us by the Legislature for 3 years now and of attending and promoting functions that are aimed to reinforce the existing unconstitutional and inequitable laws against homeowners.

How can any advocacy group that speaks out for enforcement of the laws against HOA board violations, the need for homestead exemption restoration, and that has condemned CAI, current president Ekmark in particular, continue to promote supposed educational seminars with CAI speakers or hosted by CAI? It is quite evident that these are events to promote their views which have been clearly in opposition to the legitimate demands of advocates. This is self defeating and has been for years now!

It is clear that some advocacy groups believe in HOAs and are opposed to any attempt to do away with them. This is a naïve view and misunderstands that equality under the law must come with all homeowners being subject to the same laws. And that in order to make HOAs comply with this view, and Constitutional requirement, the very structure of the HOA must change radically and that the practical and workable solution is to make them de jure governmental entities -- governmental bodies under the law.

Yet many of you out there want property values maintained, a

(Continued on page 3)

US Senator Studying HOA Problems

By AHRC News Services

On December 5, 2003 Illinois Senator Richard Durbin's Office, responding to a Federal Oversight Request, called AHRC News Services for information about homeowner associations. A staffer told AHRC she was gathering information for the Senator in response to a constituent request for Federal oversight of homeowner associations.

Senator Durbin was elected to the U.S. Senate in 1996. He is chair of the bipartisan Illinois delegation an

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Open letter to Senator Durbin (D-IL)

Dear Senator Durbin:

It's well beyond the time for the federal government to take a serious look at the planned community / homeowner association model of private government. While, for the most part, it is a state matter the widespread abuse by state legislatures that permit the loss of our guaranteed freedoms requires the Justice Department to act and to uphold the US Constitution.

> "The Arizona Appeals Court has ruled on the unconstitutionality of the delegation of legislative powers to a private organization "

We are becoming a government for the special interests and anything that puts money into their pockets has become acceptable while being a betrayal of the laws, values and principles that has made this the greatest country in the world. The state courts of Virginia and Rhode Island have ruled that certain statutes and provisions within CC&Rs that relate to fines and punishment are an unconstitutional delegation of governmental powers. The Arizona Appeals Court has ruled on the unconstitutionality of the delegation of legislative powers to a private organization without supervision or oversight is an unconstitutional delegation of governmental powers.

Furthermore, the role of HUD and Fannie Mae in establishing guidelines for funding planned communities also falls into this questionable constitutionality question because they require HOA governments without providing for the protection of the rights of homeowners. A homeowner living in a development not under HOA control has more rights that the owner in a HOA-controlled development. And it is wrong and is continually being accomplished without the fully informed consent of the home buyer.

The CC&Rs are an unconscionable adhesion contract, which courts in other industries have found to be unconstitutional. Even the much touted Uniform Common Interest Ownership Act, UCIOA, recognizes the vulnerability of a ruling of this nature and has included a section, Section 1-112, that severely restricts just how the courts may rule on the unconscionable status of CC&Rs. This is appalling, especially when some 20 states have used UCIOA as part of the their laws on HOAS.

We need your help to stop this abuse and to protect our rights, today.

Respectfully,

George K. Staropoli

President Citizens Against Private Government HOAs, Inc

Scottsdale, AZ

... US Senator

(Continued from page 1)

serves on serves on the f Appropriations , Judiciary , Governmental Affairs and Select Committee on Intelligence.

Please take time to make the Senator aware of the need for federal government investigations and oversight of homeowner associations.

To write web letters to Senator Durbin and publish them on the internet: http://www.ahrc.com/new/index.php/src/tools/sub/yp/action/display/id/706

Publishing this information helps educate our communities, government, media and businesses so that we can all work together to protect America's homes and families.

Stop unsubstantiated liens

Letter to Arizona Legislators

Dear Arizona State Legislator:

With the new Arizona legislative session to begin in a month, we need to be prepared. We know pretty much that Farnsworth bill will be back again, the one that would have required the HOA to first get a judge's approval before a lien can be filed against a homeowner.

This law is necessary as a result of the rampant abuse of the power to lien as a means for personal agendas and vendettas against homeowners who criticize the incompetence and open flaunting of state law and the CC&Rs by many boards. The homeowner, who may owe the $100 money, does not need to have the HOA file a lien so it can tack on some $300 attorney fee that it doesn't receive at all. (This is an intimidation tactic of attorneys because it's the judge who decides the amount of money the defendant owes as attorney fees). The HOA does this as a means of punishment against the homeowner and raises the constitutional question of fines and penalties by HOAs as an unconstitutional delegation of government powers to a private organization without supervision or oversight (CA-VA 2001-0198).

Homeowners need their right to due process in order to protect themselves from the potential loss of their homes.

George K. Staropoli

Citizens Against Private Government HOAs

Arizona

Reviews of Case Against State Protection of HOAs

[The following are book reviews from readers as posted to Amazon.com.]

Awakening America to its loss of freedoms, September 16, 2003, A reader from Houston, TX

George Staropoli asks: "Why are our state legislatures...(not) upholding and defending the Bill of Rights and Constitution?" He laments the media's not revealing the constitutional issues or the laws that favor HOA boards against the homeowners.

"The author presents a strong case that the state legislatures and agencies are protecting private organizations,."

Activist Staropoli's book documents his struggle to reclaim American homeowners' constitutional rights and to awaken America to its loss of freedom. Let's hope this call brings us back to an incisive and authoritative interpretation of the Constitution as the Federalist essays did in 1788.

Numerous court cases support homeowner rights, September 14, 2003, A reader from Scottsdale, AZ

This book was an eye-opener! I could not believe the number of court cases, including US Supreme Court cases, contained in this book that show support for homeowner rights. This came as a surprise because I have not read or seen anything about these issues of constitutional rights in the media.

The author presents a strong case that the state legislatures and agencies are protecting private organizations, the homeowners associations, over the rights and freedoms we all believe are ours.

From concerned homeowner in Arizona, September 12, 2003 A reader from Arizona Unbelievable!

The topic of the failure of the Arizona Legislature to assist homeowners over 3 years tells it all. I was there and I wouldn't have believed the book if I hadn't witnessed it myself.

This book let's people know what they can expect from their government and what their rights are that have been hidden from them. I urge others living in associations, even if quite content over the years, to read this book because, like me, it could happen to you tomorrow.

The Case Against State Protection of Homeowners Associations

Author: George K. Staropoli
President & Founder, Citizens Against Private Government HOAs, Inc
ISBN: 0-7414-1620-4

Amazon.com, Borders, Barnes & Noble
Price: $15.95

... HOAs reformed?

(Continued from page 1)

proper objective and goal. So does the municipality -- more tax revenues with no work or responsibility. However, this goal is being attained by breaking the laws and Constitution, by allowing misrepresentation to occur by parties in the sales transaction by which the buyer is deliberately not told the whole story, and by the real estate department's opposition to protecting the consumer from such misrepresentation. Why are so may others afraid of the truth?? Because they know HOAs are defective, that it's true that there is a collusion to misrepresent, a conspiracy of silence? Or to protect their pocketbooks and the expense of others? **Our government is charged not to interfere with our rights, but to protect them.**

Why don't these groups admit to this deliberate misrepresentation? Why, because it would force them to realize that the could not possibly promote events in which this cover-up is maintained and still fight for homeowner rights? Until the public faces up to this position that they cannot have misrepresentation to "impress" home buyers into HOAs in order to impose the one and only legal objective of the HOA -- to maintain property values -- at the expense of the principles and values that stand for America, nothing will change. Nothing!

You must decide where you stand.

Advocate for homeowners!

[Special by D. Vanitzian]

Frankly, this is tiring. I don't know what it takes to knock sense into some people. I wrote earlier to you with my response to the Buck-a-Door-Bullshit campaign, and saw no other responses. There I thought the argument was made, similar to yours, that supporting ANY affiliated industry group related seminars is counter productive. The reasons were outlined in my correspondence regarding monetary support, its effects on titleholders, and its destruction of the owner's property (let alone any imaginary value argument).

It reminds me of those revivalists in the south, "it doesn't matter what you do you will be saved." This concept, and the exploiters of it, cannot be saved. The people that need to be saved are the titleholders. Look what is happening to Mika-HOMEOWNER in Arizona. A JUDGE believes "It is in the public interest that the association should prevail." HE "alone?" decided that -- with a little help from some industry blowhards no doubt. But then the case in California where the HOA judge was bought -- with a little help from some very influential industry blowhards -- no doubts, proven.

(Continued on page 4)

... advocate for homeowners

(Continued from page 3)

Some of "our" "activists" are signaling right, and turning left. What they don't understand is that the industry's movement will get the titleholder's money any way they can -- even under the guise of calling it a "seminar."

There is NOTHING to be learned at those infomercial talks. Advocacy groups, IF they are REAL advocacy groups, CANNOT support, or be seen to be supporting, the enemy. This is a war that the homeowners are losing. What does it take to pound that in?! Wake up out there. Get the message: You are burning the bed you sleep in.

"REAL advocacy groups CANNOT support, or be seen to be supporting, the enemy."

The industry has nothing to say that I am interested in. I'd rather spend two hours listening to a homeowner whine (as some have been accused of doing) about their problems living in an HOA - and L E A R N something from it, than commiserating with the WEALTHY industry because one feels they want to know what's out there, or getting the word out so-to-speak, giving INDUSTRY time, space, air, print, disk space, to get their point of view out there is counterproductive. Stop the excuses. It is not our duty or job to do any of that. The word that needs to get out is the homeowner's word. Period.

For the record, I DO NOT WANT ANYONE FIGHTING TO RAISE MY PROPERTY VALUES, thank you very much. I never agreed to have anyone raise MY property values according to THEIR standards and terms. I disagree with you in that respect, it is NOT a proper objective and goal for living in an HOA or supporting such development. Once the state starts legislating SUBJECTIVE items like "property values" by whose measuring stick will that be judged? The idiot board member (like where I live) that has swayed all these walking dead lobotomized moron-clones just like himself, to agree that the Home Depot-quality Taj Mahal that he has just built next to MY unit, and ATTACHED to MY unit ONLY, is improving MY property values? Puh-leez! He's a practicing wannabe landscape architect on a free-for-all budget spending spree, BECAUSE ITS NOT HIS MONEY HE'S SPENDING! His artwork is supported by applause and accolades by the morons that believe such acts are increasing value. sick.

I could care less what the industry is doing, I care what WE are DOING.

Groups and so-called activists: PICK A LANE AND STAY IN IT. PUT THE PEDDLE TO THE METAL IN THE FAST LANE.

California considers UCIOA

CALIFORNIA LAW REVISION COMMISSION MEETING, Burbank, CA., November 21, 2003.

[Special by Nancy A. Levy]

Note: This brief summary, is based on my personal notes and observations. The recorded Commission's draft minutes, when completed, can be found at: http://clrc.ca.gov with the roster of members, staff, and attendees.

Two Bakersfield homeowners were present, as well as a management representative from Laguna Hills Leisure World, a representative from the DRE, and several later arrivals. The morning session consisted solely of Agenda Item No. 4 - "Common Interest Development Law".

Uniform Common Interest Ownership Act (UCIOA): Discussion was held as to whether California should consider adopting the UCIOA in whole or in part. Comment was made that it appeared to be well developed as presented, which would mean that if taken in whole CA "would have to wipe the slate clean". Authors Rosenberry & Sproul recommended that it be reviewed "issue by issue".

One of the Commissioners commented that the "radicals" would no doubt be against it due to CAI's seeming agreement to its adoption (be it in whole or part). Carl Lisman, Esq., the Vermont Co-chair of the Joint Editorial Board for Uniform Real Property Acts, noted that it was already in place in 7 states. A suggestion was made that older CIDs could remain with the Davis-Stirling Act or choose to "opt-in". The stated advantages to adopting UCIOA were: 1) It is more easily understood; 2) It was ahead of Davis-Stirling in management issues; 3) Consumer protections were in place with the DRE; and, 4) It was easier to "displace" boards and management companies.

The Commissioners then invited comments from the floor. After introducing myself as one of the "radicals" (in good humor), I expressed the opinion that as long as boards, or majority board members, with the assistance of HOA attorneys and property managers, were allowed to violate or twist the law without penalty that, "be it one new law/statute or a thousand" the current state of affairs would continue. The two Bakersfield homeowners agreed. Sandra Benato, Esq., of ECHO, stated that they had taken no formal position on UCIOA.

My home is my castle