



The HOA Citizen

HOA citizens are US citizens first!

December 2003

eNewsletter

Class action suit against lawyer

[As found on the AHRC web site.]

San Diego, California -

There have been quite a number of people who have contacted us concerning a particular law firm. The firm is Peters and Freedman, David M. Peters, attorneys.

Many people have complained that they have been harassed by numerous threatening letters, statements in front of others, unsigned letters that are proven to be coming from the same copy machine as the bill

from Peter's office, changes in the board of your HOA without approval of the membership, secret meetings against a homeowner without a hearing as is noted in the California rules and regulations for HOA... and so on and so on....

Many of us have been talking to one another behind the scenes and have decided that perhaps a class action law suit is in the making. It seems that everyone who goes up against this firm and this individual attorney, are put in the poor house by the ability of the attorney and the firm to run an individual into the ground with legal

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Florida Representative speaks openly

Florida state representative Julio Robaina was interviewed by Shu Bartholomew on her *On The Commons* live talk internet show earlier this month. He spoke quite frankly about the problems with HOAs and the states' failures to effectively deal with ma-

ior problems. From a legislator's view, many don't want to have government interfere with private contracts, but in the case of HOAs it's the widespread abuse by the boards that I forcing the Florida legisla-

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Florida Task Force meeting of Nov 14

More of an opinion than minutes

[complete report can be found at <http://www.ccfj.net/DBPRTFREP111403.html>]

By Jan Bergemann, Member of the HOA Task Force, president of CCFJ

After taking care of the necessary formalities, the Orlando meeting started

“It seems to me that none of these reforms will help the owners, if no enforcement is provided and will-full violators are not punished”

with some explanations of Senator Mike Fasano, who participated by phone. He encouraged the Task Force members to revisit the issues of **SB 1632, the bill vetoed by the Gov-**

ernor. He explained that he feels strongly about finding a solution for this problem. He stated that these communities need money to maintain the common areas, clubhouse, etc. But Senator Fasano's reasoning differed from the presentations of two homeowners, members of the United Communities of Hernando, who emphasized that association money is needed to enforce the deed restrictions and prosecute violators in courts.

So far, Nina Vaznelis, an attorney and Task Force member, has failed to find any kind of support among her fellow Task Force members. In my opinion, no miracle! Who in his right mind would be

willing to voluntarily pay into funds that could be used to sue himself? It seems that this is a new approach, since attempts have failed miserably in court to make mandatory associations out of voluntary associations. We will hear more about this issue, since Senator Fasano promised to address the Task Force in person at the Tampa meeting December 8.

But after seeing what happens in Nature Watch HOA in Pinellas County, who wants to be part of mandatory association in the first place? People who choose to be part of a voluntary association shouldn't be forced, neither by a court nor by any law, to become a member of a mandatory association. As long as there is no oversight or regulation of HOAs, who wants to be a member if he doesn't have to?

Altogether, we listened to 15 presentations from public speakers, mostly homeowners talking about problems in their communities, complaining about lack of disclosure.

We heard an interesting presentation from Scott McEntire, a homeowner in Cross Tie Ranch. He reported about the legal problems for the homeowners in this community, caused by bankrupt developers and confusing statements, combined with total lack of disclosure. For support he brought along the legislative assistants of Senator Cowin and Representative Baker, his local state legislators.

It seems that more and more legislators are
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... class action

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fees. We have decided that it is time to band together and let the court know what has been going on and the MO of this firm and this attorney.

Please contact us with your information. We will give you CONFIDENTIAL information and will keep your information CONFIDENTIAL.

The name of the attorney who will be handling this is also CONFIDENTIAL until the filing of the complaint. We presently have enough people to file the lawsuit, however, we would like to make sure that anyone who has been harmed is able to be a part of it.

Check related article links below for more information.

<http://www.ahrc.com/new/index.php/src/news/sub/article/action/ShowMedia/id/882>



AZ HOA "journal" misleads

Dear Editor,

I was not surprised by the two articles in the November issue (Arizona Community Associations Journal) on HOA disclosure requirements. Both articles, Bob Stephens, a manager at West USA Realty, and Jayne Brenna, restrict their presentation to the partial disclosure requirements of existing state laws.

There are no references to the fact that these laws do not fully disclose all the material information needed by a buyer in order to make a fully informed and knowledge decision to purchase. Here's Commissioner's Rules, having the effect of law, R4-28-1101:

"Duties to Client (emphasis is mine):

A. A licensee owes a fiduciary duty to the client and shall protect and promote the client's interests. The licensee shall also deal fairly with all other parties to a transaction.

"B. A licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially and adversely affects the consideration to be paid by any party to the transaction, "

There is also no reference to the Feb-

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... AZ HOA "journal" misleads

ruary 2002 Real Estate Bulletin in which then Commissioner Holt informed agents of the requirement to fully disclose. Nor about the fact that ADRE placed consumer information regarding homestead exemptions on its web page, without also quoting the statutes that take away the homestead exemption from owners in HOAs, ARS 33-1807 and ARS 33-1256. After Representative Farnsworth's bill was defeated, that dealt with protecting one's home from foreclosure, ADRE removed this piece on homestead exemptions and never clarified the laws.

I'm sorry, your Journal is highly biased and participates in this deception of the public -- all is rosy in an HOA. Missing are the following material facts:

- 1.the loss of homestead exemption.
2. the lack of government intervention and enforcement when HOA boards violate state laws.
3. the lack of a separation of powers and checks and balances that permit autocratic government to flourish.
4. the lack of an independent election commission to validate elections.
5. there are no standard documents approved or required by the state.
6. the HOA attorney will not come to

the homeowner's aid in a dispute regarding board violations of state law of its governing documents -- he must use his own money.

7. the homeowner has surrendered many of his property rights to a communal decision process that can obligate him to additional financial burdens without his approval.

8. the CC&Rs are a legal binding contract that can and often does result in financial consequences in the event of nonpayment of assessments or unsubstantiated fines. (Yet, state law nor AAR require that the buyer sign off on every page of the governing documents as it does with its 9 page contract).

This is an unjust public policy not in the best interests of the public.

George K. Staropoli

Citizens Against Private Government
HOAs

Scottsdale,AZ



... FL task force

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taking a personal interest in the discussions of this Task Force, obviously caused by increasing complaints from Florida homeowners.

We heard from homeowners like Gary Hinkle, Mike Sims and many other homeowners, who blamed **lack of disclosure** and **lack of governmental oversight** for the problems in their communities.

Also, we heard from attorney Paul Wean, Vice Chair of CAI-FLA (Community Association Institute - Florida Legislative Alliance) and legislative representative of OCHA (Orange County Homeowners Association). Wean was the sole voice trying to convince the Task Force members that all is pretty well in HOA La-La-Land and that the problems are mostly caused by unhappy homeowners unwilling to obey by the regulations.

All in all, Wean repeated the old industry platitude about "the few disgruntled homeowners." In his opinion, regulation of homeowners' associations or governmental enforcement of the existing laws would not be necessary. No wonder he voiced this opinion, because regulation and enforcement would most likely decrease HIS income from many legal fees created by lawsuits on these matters.

One of these lawsuits was discussed at the last meeting in Miami with my presentation regarding huge legal fees created when a

lawsuit was started by a special meeting to oust a seated board. Since my presentation created some disbelief among task force members, I distributed the **copy of the malpractice lawsuit** brought by the association against Wean & Malchow, PA. (Paul Wean is the senior partner of this law firm.) My attempt to distribute the copies of this lawsuit was strongly objected to by Task Force member Joe Adams, who is the chairman of CAI-FLA.

The copy of this lawsuit was not distributed to discredit members of the CAI, even if many homeowners are blaming them for the many problems in these associations. Task Force Co-Chairs and the DBPR Legal Counsel overruled Joe Adams' objection.

This lawsuit was further proof that government oversight is necessary to protect the homeowners. These legal problems can totally bankrupt an association, with the private homes being used as collateral for legal debts incurred during these outrageous lawsuits.

The main issue of the day -- **DISCLOSURE** -- created some lengthy discussion. Please read our views about the necessity of disclosure in our **CCFJ, Inc. Presentation**. [end of excerpt] **ber One Issue on the agenda is Purchaser Protection**, something homeowners in Florida claim is non-existent. So keep your calendar open

Amending CC&Rs has open-ended consequences

A recent Arizona Appeals case, CA-CV 02-0403, Shamrock v. Wagon Wheel HOA provides support for a very onerous interpretation of contract law relating to CC&Rs. One, along with the Arizona loss of homestead exemptions for HOA owners, can commit innocent and uninformed home buyers to additional financial obligations without their vote or approval.

“Yes, you want the board to obey the contract, but you also granted them strong powers without any protections against abuse.”

Here, like with the California Desert Crest Appeals case, a mere majority of homeowners may bind all other homeowners in ways not specified by the CC&Rs, nor revealed to them during the purchase process by Realtors, developers, the HOA or sellers. In this case, the CC&Rs were not properly amended by a majority of the sub-

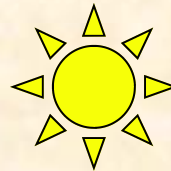
division homeowners and any other attempt, such as an awareness of the HOA's bylaws in a voluntary association, was not binding.

In this case, the court upheld the contractual basis of the CC&Rs, including the right to amend the CC&Rs by a majority vote and not by a vote of ALL the owners. Such an opened provision carries with it obligations not considered or dreamed of by the owner. The CC&Rs are a broad grant of power and is especially opened ended with this

right to modify and bind others to financial obligations. Yes, you want the board to obey the contract, but you also granted them strong powers without any protections against abuse.

See the Desert Crest case on AHRC or in the HOANET archives and The HOA Citizen (Sept 2003). In this case, the California court permitted members a voluntary association to be obligated to pay a privately owned, non-HOA owned country club, a for profit club that is open to the public, as a result of a majority vote of owners. These retired people are now obligated for another \$1000 +/- for a facility having nothing to do with maintaining HOA property values. Tomorrow, your HOA can bind you to pay for the president's support of his pet little league team, or health gym because he's a health fanatic. Your CC&Rs, and the law, do not protect you from such a decision, just the votes of your neighbors.

The Wagon Wheel people won because there was no HOA specified in the subdivision's CC&Rs and a group of people cannot bind others to a new contract without their signature.



... FL representative

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ture to investigate and to take appropriate actions. HOA boards must be held accountable, he said.

The current laws are educational and informative and don't deal with enforcement or accountability issues. HOAs have been having problems for quite some time, he added.

Shu mentioned that a municipality was having problems with properly maintaining water retention basins, but would not charge the HOA a fee so the municipality could properly maintain these basins.

That's the heart of the problem as I see it. Privatization with no governmental involvement, creating these private, independent governments operating outside the Constitution.

In memory of

Elizabeth Anne Pinson

1954—2003

Editor and special friend



Mending Walls

By Robert Frost

Something there is that doesn't love a wall,
That sends the frozen-ground-swell under it,
And spills the upper boulders in the sun;
And makes gaps even two can pass abreast.

The work of hunters is another thing:
I have come after them and made repair
Where they have left not one stone on a stone,
But they would have the rabbit out of hiding.
To please the yelping dogs.

The gaps I mean,
No one has seen them made or heard them made,
But at spring mending-time we find them there.

I let my neighbor know beyond the hill;
And on a day we meet, walk the line
And set the wall between us once again.
We keep the wall between us as we go.
To each the boulders that have fallen to each.

And some are loaves and some so nearly balls

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***Mending Wall* by Robert Frost**

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We have to use a spell to make them balance.

"Stay where you are until our backs are turned!"

We wear our fingers rough with handling them.

Oh, just another kind of outdoor game,
One on a side.

It comes to little more:

There where it is we do not need the wall:

He is all pine and I am apple orchard. My
apple trees will never get across
And eat the cones under his pines,
I tell him.

He only says, "Good fences make good neighbors."

Spring is the mischief in me, and I wonder
If I could put a notion in his head: "Why do
they make good neighbors? Isn't it
Where there are cows?
But here there are no cows."

Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offense.
Something there is that doesn't love a wall,

That wants it down." I could say "Elves" to
him,
But it's not elves exactly, and I'd rather
He said it for himself.

I see him there Bringing a stone grasped
firmly by the top
In each hand, like an old-stone savage
armed.
He moves in darkness as it seems to me,
Not of woods only and shade of tree.

He will not go behind his father's saying,
And he likes having thought of it so well
He says again,

"Good fences make good neighbors."



Happy Holidays!



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