



The HOA Citizen

HOA citizens are US citizens first!

February 2004
eNewsletter

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Nevada gets strong HOA laws

As of January 1st, a number of new laws went into effect in Nevada. The new act formed as a result of the passage of SB100 last year, is rather lengthy, so it's just summarized here with my comments.

It provides for an Ombudsman and agency that can impose fines and penalties for violations of the laws. It also has a very good start on a mandatory disclosure notice.



- 1. Section 28, 1 by "Agent" should explicitly name HOA attorneys.
- 2. Sec 29, 3 is good -- intervention to remedy a violation. Does it include amending the private contract agreement in

violation of the US Constitution, Art 1, section 1.10? CAI is well aware of this private contract prohibition.

- 3. Section 35 is getting to the heart of the matter. However, I'm very suspicious of the membership of the Commission, all of whom are NOT friendly to the homeowner. Will they argue that the law is such and such, and therefore, tough luck, without recommending and fighting for new laws?
- Further, if it is shown to be a personal act the exec board member should not be allowed to use HOA funds to pay the fine, irrespective of any E & O

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CC&Rs supersedes US Constitution?

Here's a copyrighted news article link,

<http://www.wftv.com/news/2720786/detail.html> (Sarasota, FL WFTV)

It clearly shows how the state legislatures and courts have allowed that one fragmented phrase in Art 1,

section 1.10, relation to the noninterference in contracts to allow these contracts to violate our rights. It's disgraceful!

Here's what the homeowner who sought to display a religious statue in her yard had to say: "This is an

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HOA governance basics

From a homeowner:

What is the responsibility of the management company? The management company is a "hired hand" whose responsibilities are granted under a contract like any other service contract. Legally, they are answerable to the board and are subject to the board's direction.



"Who governs the HOA associations?"
The board.

Whom makes them accountable? No one, not even the state."

Board Members are responsible for what?

Legally, they run the HOA with final responsibility for its conduct and actions. The individual board member has no responsibility

unless he/she is an officer and has been given such authority under the CC&Rs or by the board. For example, the secretary has no authority for enforcement of R&Rs. The vice president may have such authority. All officers are answerable to the president and to the direction of the board. This is corporate law.

Minute meetings are they suppose to be disclosed? Whose responsible? Minutes are a record of what the board did.

They don't have to contain a verbatim record of what happened. Many governing documents specify the taking and distribution of minutes. If

taken, they are part of the HOA records and any homeowner is entitled to a copy. Problem is, HOAs don't keep records. Records are subpoena material in a court action. If they do not show that such an action took place at a properly called and conducted meeting, the alleged conduct by the board can be overturned.

In law, any action not granted by the governing documents or properly authorized by a board action are unenforceable in court. Any attempt to lien a home or to foreclose based on such "illegal" actions will not be upheld. However, the CC&Rs grant the board broad powers, so homeowners often lose in such matters of "interpretation".

When voting in Board members are they suppose to announce that to the residents? Under commonsense and reasonableness views that the courts go by, YES. But, many HOAs tell nobody. Again, what properly called annual meeting or board appointment took place, when?

Who governs the HOA associations?
The board.

Whom makes them accountable? No one, not even the state. The homeowner must spend his own money against the HOA hired attorney, that the homeowners pay for with their dues. and bring the board to court.



... Nevada laws

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insurance. Now, that's a deterrent! However, subsection 5 still gives the HOA free reign by addressing the insurance issue.

- 4. Section 37 is better, but see comment 3 above.
- 5. Section 40. Let's not leave out the failures of the State Bars to enforce their rule on "organization as a client" when the HOA acts as a conspirator to help the board violate the law and governing documents. Thanks for the reference and I will pursue status in Nevada and call this to the attention of AZ legislators.
- Oops. Section 84 relating to disclosure. Very good and getting closer. No mention of a private contract and no state intervention, but does specify civil remedies; or, with this bill, the mechanism to file a complaint and the nature of the penalties. The homeowner should be given a state pamphlet on just how this procedure will or does work. This will be full and informed consent.
- Too many lengthy paragraphs. False reference to HOAs as democratic governments in sub 4. Does not specify just what is meant by certain rights "guaranteed by the state" in sub 6.

Arizona: 16 HOA bills

Arizona began its latest legislative session with some 16 HOA bills being offered: 14 House bills and 2 Senate bills were submitted. Most bills are quite short and I will give you a quick synopsis and how to read the entire bill.

To see the bills go to <http://www.azleg.state.az.us> and just click on bills. If you wish, you can monitor the status of the bills by registering and Tracking each bill automatically.

I just did a fast look and will analyze later. Please send these legislators a thanks for sponsoring the bills, even if you have some reservations or changes that you'd like to see. Without their Bill, we would have nothing to talk about.



Here are the Bills:

HB 2177—Straughn et al — affects 33- liberalizes open meeting restrictions

HB 2292 - Farnsworth -- affects 33-1802 -- on association definitions

HB2334 -Hershberger - affects 33-1810 - apartment residents voting rights

HB2368 - C Gray et al -- homestead exemption raised to \$150K

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... Arizona bills

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HB2374 - C Gray et al -- affects 33-1250, 33-1810 -- NO PROXIES

HB2377 -- C Gray et al -- 33-1242, 33-1803 -- penalties

HB2378 -- C Gray et al -- 33-1248, 33-1804 -- open meetings -- HOA is a public body

HB2379 -- C Gray et al -- 33-1210, 33-1810 -- annual audit with mandatory CPA



HB2380 - C Gray et al -- 33-1260, 33-1806 -- buyer disclosure; acknowledge the contract and LOSS of exemption

HB2381 - C Gray et al -- 33-1243, 33-1810 -- BOD contractual conflicts of interest

HB2404 -- Farnsworth -- 33-1256, 33-1807 -- the OLD BILL AGAIN on 7 year wait and judge to decide first

HB2343 -- Harper -- governmental agency privatization oversight, review and procedures

SB1125 - affects 33-1256, 331807 -- Tibshraeny et al -- registering of HOA with county clerk

SB1137 affects 10-3304, 33-1802, 33-1202—Hellon — it removes restraints

on 10% requirement of members to sue the board of a condo or planned community

HB2478 -- affects 33-1808 -- Prezelski et al -- allows political signs to be displayed

HB2485 -- affects 33-1101, 33-1103 - Mason et al -- REMOVES LIMIT ON HOMESTEAD EXEMPTION AND STRENGTHENS THE EXCLUSION FOR JUDGMENTS AND PROPERTY TAX LIENS (why?)

I'm impressed with the bills but remember, the special interests will still be whispering in the ears, behind the scenes, of these legislators waving BIG dollars.

Look at the open meetings bill, HB2378, and the privatization bill, HB 2453, the disclosure bill, HB2380. These will bring out very important principles concerning our rights and these private governments.

Look at the others that deal with mail votes in place of proxies (recommended by Roberts Rules), penalties, the liens bill by Farnsworth again, expedited JP court hearings (lowest level of the courts), CPA audits and conflict of interest bills.

Look to those misguided BODs who will claim to speak for ALL their members and who will invoke unsubstantiated claims -- the HOA will collapse if

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Florida Task Force: same ol', same ol'?

From Cyber Citizens for Justice

CCFJ, Inc. Dispatch -- Please distribute widely!

Dear Governor Bush, dear Attorney General Charlie Crist, dear Legislators, Friends and Members,

The meetings of the HOA Task Force are nearly over and it becomes more and more obvious that the task force will be totally ineffective and will create an even bigger gap between consumer and industry than we already had before. Homeowners will be left helpless without checks and balances in place.

The homeowners' representatives laid their proposals on the table, for everybody to see. In our opinion we proposed feasible solutions, including funding without dipping into the regular tax funds. We are willing to pay for our own protection! But we do need the help of our elected officials!

Whoever decided to create this task force with a 15-member panel, appointing 10 industry members, 2 government employees (as voting members), and only 3 homeowner representatives, must have in my opinion lacked total common sense or was from starters interested to stack the deck in favor of the industry. It was obvious from Day One that this panel will never be able to make feasible recommendations "to harmonize and improve relations between

homeowners, homeowners' associations and other related entities," as quoted in the mission statement.

The three homeowners on the panel did what they were asked to do. We attended the meetings, jumped through the political hoops and made our proposals, only to be shot down every time by the industry partisans and the two government employees, who permanently voted against motions that would have helped to protect the homeowners. Instead of trying to improve the disastrous conditions in homeowners' associations, the industry members voted in favor of proposals that would create more unenforceable statutes and will open homeowners in Florida to even more abuses. And will further enrich attorneys -- 7 attorneys were on the task force panel - and will create even more expensive lawsuits! Is that what you had in mind when you created this task force?

You have put the fox in charge of the hen house!

Many homeowners all over the State of Florida testified at the meetings.

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... Florida Task Force

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We heard a lot more unbelievable stories, and piles of letters and e-mails were sent to the Governor, DBPR and task force members, begging for help. Only to be totally ignored by the majority of the task force members.

See my report at:

<http://www.ccfj.net/DBPRTFREP1904.html>

"A Government Agency with enforcement powers, a stop to the foreclosure abuse and the protection of our vested rights are on the top of our list."

Once more, the money of the industry and the ineffectiveness of our elected officials have silenced the voices of the citizens and voters in Florida.

I was personally very baffled by the fact that the government employees voted publicly against consumer protection, claiming that "**the Governor is against regulation!**"

Governor Bush, if this is really the truth, we hereby ask you to personally declare your intentions. The citizens and voters of Florida have the right to know what is really on the minds of our elected officials, so we can make informed decisions at the upcoming November elections.

We will ask our honest legislators to file the necessary bills, which property

owners in Florida need to see enacted to protect their rights.

A Government Agency with enforcement powers, a stop to the foreclosure abuse and the protection of our vested rights are on the top of our list. We will not rest until these goals are achieved. I think that many politicians still underestimate the importance of these real issues. So did former California Governor Gray Davis!

The movement of homeowners' activists is definitely gaining momentum. Even if the task force was ineffective, it created a great PR platform and we found many more interested citizens willing to take on the problems we are facing. More alliances were formed and it is obvious that this will not stop until feasible solutions are being enacted!

And we will rely heavily on the Members of the House Select Committee on Condo Governance to come up with the right proposals to protect our rights!

We consumers just need to know who is on our side, so we can do the right thing at the polls in November. I can assure you that many homeowners are willing to ignore their regular party affiliation and vote in favor of politi-

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... CC&Rs supercede

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abuse of power," the homeowner said. "The bylaws of a deed-restricted community supersede your right as an American citizen."

Our government is allowing HOAs to ruin our values, morals and ethical basis for right and good behavior to mean: if it maintains property values in any form, or by any arbitrary or capricious decisions by ill informed boards of directors, then it's great for America. The principles of freedoms and private property and unalienable rights be damned! Property values has surpassed them.

It has to stop and stop now! Let your media and state legislators know today!!! We won't stand for it any longer nor we will accept the lame excuses of the legislators in the hands of the money seeking special interest!



... Arizona bills

we can't have foreclosure, as they did last year.

We must let the legislators know that we appreciate their efforts, so long as they are bona fide and will provide meaningful support.

We still don't have enforcement like in Nevada. Please refer to the Nevada effort to make our point and to get enforcement when you write the legislators.



... Florida Task Force

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cians who are eager to fight for our consumer rights.

Until -- **OUR HOME IS OUR CASTLE** -
- again!

We are sick and tired to be treated as step children of our society!

Warm Regards

Jan Bergemann
President, Cyber Citizens For Justice,
Inc.



Plato on HOAs (from the Republic)

An HOANET subscriber, P Ireland, posted:

"... When you have a well constructed state with a well-framed legal code, to put incompetent officials in charge of administering the code is a waste of good laws, and the whole business degenerates into farce. And not only that: the state will find that its laws are doing it damage and injury on a gigantic scale." (Laws, Book VI)

Many board members are "incompetent officials". We have seen the damage and injury.

AND, "I wonder if we could contrive ... some magnificent myth that would in itself carry conviction to our whole community." (Republic).

Comments from Fred Pilot:

The gist of my comments is that that legislative reform proposals are misguided in that they can't address the market and cultural underpinnings of the problems with private HOA governance. No amount of laws can make homebuyers embrace private local government and participate in it.

Good point. More laws won't solve the in-

herent problems with private HOA governance because the problems are not grounded in inadequate statutes. They are more based on consumer preferences that don't accept the private HOA governance scheme and a weak governance culture that lacks a public service mindset, institutional support and the pursuit of best practices.

As *Privatopia* author Evan McKenzie has noted, private government is already far too complex and legalistic and piling more statutes isn't likely to change anything.

"Same sentiment that unscrupulous real estate agents cultivated by engaging in "block busting"

Bingo. And the number one myth is without private HOA governance, entire communities would fall victim to blight as local governments simply sat back and did nothing. Same sentiment that unscrupulous real estate agents cultivated by engaging in "block busting" in the 1950s-70s by telling people they better sell now because members of a minority group were coming into the neighborhood and would drive down property values.

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