



# The HOA Citizen

*HOA citizens are US citizens first!*

June 2003

Vol.1 No. 2

## Homestead protection wrong

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[email sent to the Arizona Commissioner of Real Estate]

Dear Real Estate Commissioner:

On the department's web site, under Consumer Information, you provide misleading information to home buyers with respect to Homestead protections, especially to those buying a home in a planned community.

While the Property statutes are quoted, ARS 33-1101 through ARS 33-1105, your department fails to inform buyers that under the Condo and Planned Community statutes, ARS 33-1256 and ARS 33-1807, the homeowner has these rights removed solely to protect private

organizations called HOAs. Many feel that there is no overwhelming public interest served by this unequal application and protection of the laws.

I am quite shocked by this blatant misstatement of the facts, especially after the heated debates last month over the anti-foreclosure bill, HB2307, attempting to give home buyers some protections in view of the loss of their Homestead protection. This negligence on the part of the department raises the concern that the Real Estate Department still refuses to protect consumers when it comes to homeowner associations.

The other issue with the department occurred in 2002 when I first informed the department regarding

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## Governor vetoes construction defects bill

Governor Napolitano believed that , the construction defects bill, HB 2034, favored the builders over the constitutional rights of homeowners to recover dam-

ages in the courts. The bill had the nonsense restriction that the CC&Rs/By-laws had to have a provision for "a commercially reasonable" provision for such

actions. Say what? We know there aren't any.

This bill is a prime example of what ails

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## Arizona HOA dissolution

There have been a number of concerns from homeowners that they have been told 1) that city would not take over the common areas or 2) that the cost of the city or private organization would be prohibitive if the HOA were to be dissolved. It seems that they got this information from either the HOA management firm or from the board members.

### Special points of interest:

- See the article, "Planned communities", on page 5, for an instance where the CC&Rs were automatically expired by Florida law.
- Same article tells how homeowners terminated their CC&Rs

The Arizona statutes for planned communities say nothing and for condos, ARS 33-1228, they refer to the declaration and the right to sell all common property and real estate. Beyond that dissolution of the nonprofit corporation is governed by the corporation statutes in ARS 10-11401 through ARS 10-11407 that, among other things, calls for protecting and distributing the

assets to the membership.

Most CC&Rs have a statement about dissolution and or termination, but really say very little.

The affects of dissolution will depend upon the type of common area owned and or maintained by the HOA organization. Street maintenance can be turned over to the city/town as part of the taxes already being paid that municipality. If

the streets are not to code, then other actions will be required.

In short, any facilities that are similar to other private organizations, such as pools or country and golf clubs can be placed under an outside firm to operate and maintain. These services must be contracted for by some organization that is the successor to the HOA. Or the common areas sold to service providers as common areas for the community.

The important point to remember is that this new organization will be restricted to what the contract states which will not affect your property rights relating to your home. In other words, lawn and exterior maintenance can be excluded and become the responsibility of each homeowner, or made part of the new organization's responsibilities.

The fees will be marketplace fees set by negotiating with other service providers — landscapers, pool service, street cleaners.

What will be missing is the adhesion contract with its provisions that are onerous to the homeowner. The CC&Rs and bylaws will be gone and a new, more friendly agreement entered into willingly and openly by homeowners can be in place.

If there are no such facilities, then there are no consequences, except for no more assessments.

NO LEGAL ADVICE IS INTENDED BY THIS ARTICLE AND EXPERT OPINION SHOULD BE SOUGHT IF YOU HAVE CONCERNS \*\*\*\*\*

## ... Homestead

*(Continued from page 1)*

its obligations to protect consumer home buyers. The department refused to mandate a full disclosure notice that agents must provide home buyers. It appears that your department is refusing to meet its obligations under the law.

I hope you will correct these misleading statements.

George K. Staropoli, May 16, 2003

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## CA bill AB 512 aims to help homeowners

The California bill, AB512 sponsored by Assemblywoman Pat Bates, passed the House. But CAI has objections, as they did with the Arizona anti-foreclosure bill. How could anyone who claims associations are democratic oppose it. Here's just a part of the bill.

### Article 4. Operating Rules

1357.100. As used in this article, "rule change" means the adoption, amendment, or repeal of an operating rule by the board of directors of the association.

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## ... Construction defects

*(Continued from page 1)*

HOAs -- the contractual goal of maintaining property rights with no protection for a homeowners constitutional rights. We have heard this over and over again, and many believe in this right to ignore the constitution. What difference is this objective of these private HOA governments that supersede all other rights, including those basic rights that this country was founded on, from a fascist state goal? None whatsoever!

And a good part of those fundamental rights lies in the Bill of Rights to protect the minority from the whims of the majority. It's the American way, folks. It's down right disgusting that all these people concerned with the value of property rights, also ignore the fact that people bought homes, and are continuing to buy homes, with the full facts deliberately being kept from them by the real estate special interests.

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**The death protection homestead**

## Guest Commentary: CAI fosters harmony??

By Donie Vanitzian

It is amazing that a vendor-contract-driven entity, CAI, has the gall to claim it "fosters more responsive, competent and harmonious community associations". "Fostering" amounts to interference in the association's business.

The quote, "Community associations exist because they offer choices, lifestyles, amenities and efficiencies that people value, and the best of them offer a comforting sense of real community," is incompetent -- pure unmitigated hyperbole unsupported by reliable facts. As stated in *Villa Appalling!* amenities, are whimsical "promises" that may or may not materialize yet continue to be funded by unsuspecting homeowners.

What the hell are "efficiencies?" that people value? What's efficient about runaway costs and foreclosures? Also, since when did CAI go into the morality business in determining peoples values? There is "nothing comforting about litigation or threat of lawsuits, liens, 24-hour harassment, foreclosures, fines, penalties, assessments and rising costs; all out of the control of **property owners**"

They state: In addition to receiving "respectful and honest treatment from **residents**, community leaders have the **right to expect** homeowners and NON-owner residents to meet their financial obligations to the community. Leadership responsibilities include exercising sound

business judgment and following established management practices".

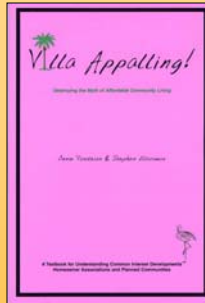
"Community Leaders" have no right to expect **anything**. Resident property owners fund the codified FRAUD perpetrated on them. Property owners homes amount to **collateral**, which is then used by industry to fund their pension and bank accounts, and perpetual

payrolls.

It is NOT the expectation of a lobby interest funded by industry with a vested interest in vendor-contracts with associations to **expect anything**, most especially "respectful and honest treatment from residents" who are **not party to association contacts**. Industry-operatives can hypothetically expect **only** what is written into their vendor-contracts.

By including "non-owners" in their statement, industry injects

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"Destroying the myth of affordable community living"

## Planned communities lose right to enforce rules as deed restrictions expire

The South Florida Sun-Sentinel reported that deed restrictions on private houses are living on borrowed time, having been limited to a 20—30-year life span by state laws or by the CC&Rs themselves. When the CC&Rs expire end, legal problems can begin.

The legal problems have already been felt in one Broward County community in South Florida, but most homeowners in those communities don't know about a looming problem that's bigger than keeping kids out of senior enclaves and trucks off side lawns.

The Sun-Sentinel reports “The Woodlands, a well-kept, 890-home development in Tamarac, discovered about 18 months ago that its deed restrictions had lapsed. The expiration of the restrictions left the homeowners association powerless to collect dues and enforce community standards.

“The association tried to revive the community standards by installing a controversial new taxing district through the state Legislature. The effort died in the Senate this month”.

The problem arose, as many with planned communities, shortsightedness and a lack of concern on the social and legal impacts on homeowners. Florida had passed a law to make it easier to research titles and declared all CC&Rs after 30 years would be null and void.

A very disturbing long range impact of this “quick buck” for the builders mentality by legislatures in almost all states will deal with senior citizens not being able to make the HOA payments. This is a serious problem because as we get older we increase the likelihood of a severe impact on our income in terms of the loss of the bread-winner, sever disability, retirement, etc.

There is no offsetting reduction in the assessments as we have with income taxes, or benefits as we have with medical and drug benefits. This will cause many to lose their homes when they can do very little about it. Yes, certain groups will be able to survive, but with the mass marketing to home buyers and the short sighted requirement by ,more and more towns and cites for mandated HOAs, the problem will soon loom very large on the horizon.

Other states probably don't have such a law, just the provisions in the communities CC&Rs that usually call for a very high vote to terminate the CC&Rs. The apathetic manner in which homeowners participate and the lack of

### Special points of interest:

- See article, “Arizona HOA dissolution”, on page 2, that discusses affects of loss of CC&Rs
- Same article covers planning for voluntary termination of the CC&Rs.

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## ... Planned communities

*(Continued from page 5)*

adequate checks on board actions, there is a serious impediment for homeowners to quash the CC&Rs. But it has been done

In the small Arizona town of Salome, homeowners voted to terminate the HOA and were faced with a suit by the HOA board to nullify the vote. After more than a year, the board, that was supposed to have fiduciary responsibilities

**“will they or will they not abide by the community restrictions?”**

to the members, caved in and realized that the vote was conducted according to the CC&Rs and state laws. A victory for the homeowners.

Another similar instance took place in the destination town of Sedona with all those red rocks seen in many westerns of the 50s.

Here, after 30 years of voluntary membership, the board attempted to make the community a mandated HOA membership community. The homeowners didn't buy into it and voted it down.

What to do if you want to terminate your CC&RS for whatever reason? Most communities have a mechanism to continue the CC&Rs and it usually happens without a problem. However, in the Florida situation, if the problem is addressed before the 30-year mark passes, the restrictions can be extended easily.

According to the article, “after the restrictions expire, homeowners can't be compelled to accept new restrictions, which would bring financial obligations and maintenance standards.”

One HOA president “no homeowners have declined to make their monthly payments, but future residents may feel otherwise. He added, “I am concerned in the long range. “As new residents move in, the most obvious question is, will they or will they not abide by the community restrictions.”

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## ... CA bill AB 512

*(Continued from page 3)*

1357.110. This article applies to an operating rule relating to any of the following subjects:

- (a) Use of the common area or of an exclusive use common area.
- (b) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.
- (c) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

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## ... CAI harmony

*(Continued from page 4)*

themselves into private leases and rentals of **owners**: An absolute invasion of privacy and interference with contractual agreements and prospective economic advantage.

Industry's intrusion into private lives of homeowners: Since when do "community leaders" (whoever **that's** supposed to be) have a "**right to expect** homeowners. meet their financial obligations to the community?" It is the duty of the **homeowners, boards, associations**, to oversee those actions -- NOT, the vendor-contract third-party interloper. The vendor-third-party's interest is: Getting paid. That's it. Their **only** concern should be that the check they receive doesn't bounce.

WITHOUT ENFORCEABLE STATUTORY PENALTIES AGAINST RECALCITRANT BOARDS, NOTHING MATTERS.

**NOTE:** Donie Vantizian is co-author of *Villa Appalling!* with Stephen Glassman.

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(d) Assessment collection procedures.

1357.120. This article does not apply to the following actions by the board of

## ... CA bill AB 512

directors of an association:

(a) A decision in a specific case that is not intended to apply generally.

(b) A decision setting the amount of a regular or special assessment.

(c) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.

(d) Issuance of a document that merely repeats existing law or the governing documents.

1357.130. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

(b) The rule is within the authority of the board of directors of the association conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.

(c) The rule is consistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association.

(d) The rule is adopted, amended, or repealed in good faith and in substantial compliance with the requirements of this article.

1357.140. The board of directors of an association shall provide members with notice and an opportunity to comment before making a rule change.

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## Homeowner Privatization Scale

Having spent a few years in this arena of homeowner associations, I've come up with a scale (HOPS) to help define where a person stands on the status and acceptance of HOAs. This is based on the attitudes and statements made by the person and will be helpful in understanding and communicating with him.

I chose a scale based on the degree of privatization that is acceptable to the person; that is, how strongly does the person identify and accept the level of privatization in one's life and home and the intrusion into one's privacy by HOA boards. There are 5 classifications:

**REVISIONIST**-- This person sees HOAs as an anomaly to the American way of life and beliefs, and operating outside the laws of the land. The HOA model must be completely revised.

**REFORMER**-- This person generally accepts the model and powers of the HOA as granted by the CC&Rs and permitted by the state governments. He only wants the board to change its ways to conform to his views. He's primarily concerned about his own local problem.

**AVERAGE HO**-- He is the person who is

content with his HOA, only seeing "personal" aspects of the HOA's powers and functions; that is, the HOA keeps the community neat and clean, provides amenities, etc. This person does not understand the broader issues surrounding HOAs. There are no problems with the board, just those homeowners who don't comply.

**CLUB JOINER**-- This person understands the private nature of the HOA, but prefers it and the sanctions against members. He primarily is concerned about the quality and value of his community. A believer in private clubs and their restrictions, and a person's right to associate with whom he pleases. He does not let violations of fundamental principles and laws affect him.

**PRIVATEER**-- This person is a power player who understands that the HOA private organization structure, with the lack of government enforcement against HOA board violators, offers an opportunity to control and to dominate. "What's good for him is good for the community". Most horror stories can be found here.

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**Citizens Against Private Government HOAs, Inc**

Scottsdale, AZ

Phone: 602-228-2891  
Fax: 602-996-3007  
Email: pvtgov@cs.com

George Staropoli  
President & Founder



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