



Will the real Community Associations Institute (CAI) standup: its contradictory beliefs, pronouncements and goals

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With respect to my Commentary, [Misrepresentation: CAI comes with unclean hands](#), this paper contains quotes by CAI leaders, state chapter leaders and CAI attorneys - in 20% of the states - made to the public in general in its advertising and communications, to state legislatures, and to the courts in its amicus briefs. All in support of my arguments of misrepresentation.

They are often contradictory as suited to the purpose at hand; or rejecting principles of democratic government and the US Constitution; or declaring, like fascist principles, that the objectives of the HOA (state) come first and individual freedoms are subservient to the HOA. And, as is true of fascism, the HOA serves the trade group 'stakeholder' entities (corporations) while giving the illusion of democracy because the members can vote.

You will also read that CAI's fundamental basis in defense of these authoritarian, private governments, which are not subject to the Constitution as required of all public governments, is that the "members agreed to the CC&Rs and by-laws" and that remaining in the HOA is an implicit agreement to be bound. (For more on the 'consent to agree' criticism, see "[Consent to be governed, No. 4](#)," *HOA Common Sense: rejecting private government*). In item 12, the MO amicus brief, CAI utters an ipse dixit (dicta that is not supported by authorities) that "*By purchasing property at Grand Point Island, each homeowner agreed to abide by the Subdivision's pre-established guidelines.*" There is no affidavit of acceptance and agreement, or waiver of rights.

The use of constructive notice under the doctrine of equitable servitudes is inconsistent with the requirements for a bona fide contract under contract law, and is insufficient for the waiver and surrender of constitutional and fundamental rights as set forth by the US Supreme Court.

As you read through the list of CAI conduct and statements, ask yourself:

1. Is it ethical and legally valid for a CAI as a business trade group to claim that it represents the consumers of its members' services - HOAs and the members of HOAs?

2. Do the listed incidents across the country support CAI's claim to build "vibrant," "competent communities" and "responsible citizenship"?
3. Does CAI believe that HOAs are not part of "the American Zone" (OnTheCommons.com motto), but are an independent entity not subject to the Constitution?

The Evidence

Here is my compiled list of what CAI stands for, in the words of its national and state leader and attorneys. You decide.

1. **CAI national** referenced in its Part 2 Critical Mass article (2006), in part, my "open letter to CAI" where I wrote, among other things,

"At the heart of the matter is the continued replacement of democratic local government, governments subject to the U.S. Constitution and 14th Amendment prohibitions, with contractual, authoritarian private governments that are not subject to the prohibitions of the 14th Amendment."

The article then quotes Tom Skiba's (the CAI CEO) reply:

"The fact is that by statute, common law, contract, and decades of practice, community associations are not-for-profit entities,' Skiba says, 'and are and should be subject to the relevant and applicable business law, contract law, and specific community association or common-interest-development law in each state.'"

Note that Skiba is saying HOAs are not governments and he omits HOAs being subject to the US and state Constitution.

2. **CAI CEO** Tom Skiba lauds democracy in HOAs in his Ungated blog (2008), but insists HOAs are not governments. Can you follow the logic?

"Community associations are not governments Yet they are clearly democratic in their operations, electing their leadership from among the homeowners on a periodic basis. In fact, associations operate much more democratically than almost any other form of corporate entity. I don't think government should dictate in detail how associations should be run from some far off state capital or even Washington, DC. That would be taking away an associations democratic rights and responsibilities. [But the "take it or leave it" developer CC&Rs are an excellent example of the voice of the people?]

" If we lose faith in the democratic process in our communities, the next step is losing faith at the city, county, state, and federal levels. I for one prefer the democratic principles that have served this country for more than 230 years." [Why then does CAI not include in its education program classes on good government, local government, Government 101, etc.?)

3. **CAI national** equates HOAs as a quasi-government in defense of its priority lien foreclosure policy for HOAs. *“While liens for real estate taxes and other governmental charges against a unit have priority over a first mortgage or deed of trust, community housing association assessments have no such priority because of a lack of legislative authority, even though the association often serves a quasi-governmental function.”* [But, CAI is against ‘the extension of constitutional protections as stated in Twin Rivers as listed herein].

4. **CAI national’s criticism of the AARP Homeowners Bill of Rights.** In its monthly publication, Common Ground, *“But it’s also true that collections are fundamental and necessary. . . . Accordingly it’s reasonable to expect all homeowners to honor their promise.”* [CG fails to mention that the purchase process itself is not honorable, and the CC&Rs are unconscionable adhesion contracts.]

5. **Arizona LAC opposition to allowing a fair and just HOA problem adjudication** by means of administrative law judge found in the state’s general administrative law statutes. *“Below are the reasons why this is a bad bill: . . . 3. More expense in the form of attorneys’ fees; 6. Increased and open-ended liability for associations because the ALJ will have the ability to fine with no limits;”* [(3) above is false as OAH does not allow for attorney fees; (6) above is false as fines are limited to \$500.]

6. **Arizona law firm** headed by past CAI CCAL president Scott Carpenter filed 3 challenges to have ALJ adjudication of HOA disputes declared unconstitutional on technical grounds. [Legislature simply revised statute and ALJ remained effective].

7. **Arizona CAI** Carpenter law firm advises HOAs on what are reasonable rules to videotaping HOA meetings, just made law.

- *All recording devices must run on batteries*
- *The recording device must be visible to the board of directors at all times during the meeting while the device is recording.*
- *All videotaping must be on a tripod and must be located in the back of the room*
- *The Board of Directors shall have a right to receive a copy of the recording, at Association expense.*

8. **California’s Beth Grimm**, CAI CCAL member and a legal-academic aristocrat also criticizes AARP’s Bill of Rights. She begins her critical paper with a selected negative quote taken from a single website and made by a truly angry and frustrated homeowner to make her point. She states, *“I don’t know about you, but I do not want to live next door to ‘Ian in Florida’”*. Grimm then presents a lengthy table made to appear objective, yet as contains such “”cons” as [a few examples]:

- [foreclosure] raising the board vote needed to authorize foreclosure unnecessarily complicates Board actions.
- [disclosure] Not being able to exercise rules just because an owner says they were not told about them is bordering on ludicrous. Anyone could claim this. This kind of regulation would trigger a disclosure to be signed in escrow that the buyer read all the governing documents. And neither party would be better off for invoking this right.
- [rules changes] Legislating the ability or right to make neighbor contacts **is over-reaching**. If neighbors are amenable to visits, they will receive them kindly [An apples and oranges reply]
- [surrender of rights and elections advocacy] **Not surrender any essential rights of autonomy**" is a matter of subjectivity and degree, and not realistic.

9. **California's LAC's unconstitutional taking** of common area opposition to bill permitting electric vehicle stations in common areas as part of its public policy on energy savings. *"However, a very significant problem remained unresolved in that the measure essentially condones an unconstitutional governmental "taking" of property that is commonly owned by all the members for the benefit of one."*

10. **Colorado's CAI** declares its extensive involvement in lobbying state legislatures and drafting bills in its appellate amicus brief in Booth Creek (2008), while declaring its mission as educational.

"CAI was the sponsor of this legislation and has participated in every amendment since the legislature adopted this law in 1991 .. Additionally, the attorney writing this Amicus Curiae Brief was one of the authors of this legislation, has participated in writing these amendments, and is a recognized expert witness on this subject in Colorado courts. CAI has sponsored legislation in every state and has filed amicus curiae briefs in matters before the appellate and state supreme courts in many states. . . . CAI is uniquely situated to provide information to this Court because all parties within this industry are represented by this organization.

"Amicus Curiae Community Associations Institute ("CAI") is a national nonprofit research and education organization formed in 1973 . . . to provide effective and objective guidance for the creation and operation of condominiums, co-operatives, and homeowner associations .. Nationally, members of CAI include a broad spectrum of parties, specifically homeowner associations and condominium associations, community managers, and attorneys, accountants, lenders, and related professionals, and service providers." ["homeowner members' has been omitted]

11. **The IL CAI chapter** filed an amicus curiae brief to the IL Supreme Court in Spanish Village (2013), stating,

"The Institute's mission is to serve as a national voice for those involved in community associations, including homeowners, governing boards, service providers, and vendors. . . . The Illinois Chapter's mission is to provide education and resources to Illinois residential condominium, cooperative, and homeowners associations, as well as represent their interests and the interests of Illinois community association members on issues of legal importance."

12. **MO CAI brief** (*Hellman v. Sparks*, 2014) argues that HOAs are private governments and disaster would befall the state if the court, rather than the members, terminated the HOA. The local home rule HOA is free to do as it pleases in defiance of the US and Missouri constitutions.

“Community associations are a form of private governance with broad powers to provide maintenance and insurance for common property, to enforce restrictions on use and architectural covenants, and to charge and collect assessments, all for the mutual benefit of all the owners and the best interests of the community as a whole. If the Court accepts the Appellants’ arguments, the effect would be to terminate the Association by court order rather than any voluntary action taken by the homeowners and would yield disastrous results for other community associations throughout Missouri.” [The HOA is above the courts and the Constitution as an independent principality].

13. **“The NJ CAI amicus brief to the NJ appellate court in Twin Rivers free speech case –** *“This Court must balance the [homeowner's] claims that focus on their perceived 'rights' versus the rights and legitimate economic expectations of other homeowners”*; *“In the context of community associations, the unwise extension of constitutional rights to the use of private property by members [...] raises the likelihood that judicial intervention will become the norm, and serve as the preferred mechanism for decision-making, rather than members effectuating change through the democratic process ”.* [Fascism (the HOA is above the people) and rejection of constitutional government].

14. **CAI NJ** once again rejects constitutional protections for HOA members (Dubliner NJ Supreme Court amicus brief, 2012) as it would interfere with the private nature of HOAs, and their status as independent principalities. Rejecting the Twin Rivers prior holding and accepting the Mazdabrook opinion, the court held the HOA denied plaintiff’s their free speech rights. CAI argued for secession from the Constitution as follows (which was rejected by the court):

“CAI-NJ’s concern is the attempt to convert private communities into constitutional actors.” [What is a “constitutional actor”? It is not a state actor. Is it one who adheres to the US and state constitutions?].

“Therefore, CAI-NJ opposes the extension of the application of the Constitution’s free speech clause to the cooperative’s property in this case. Constitutional protections are not necessary to protect association members’ rights to communicate with fellow members, to run for office or to participate in the community’s affairs. These rights of members do not arise from the State Constitution but rather from statutes, contract, the association’s and governing board’s fiduciary duties, public policy and fundamental fairness.”

15. **NJ CAI** brief treats HOA assessments to public taxes in order for HOA to survive. The LedgeWood Village brief stated, *“Just as a taxpayer may not withhold tax payments because of alleged claims against the government or dissatisfaction with services provided, a condominium unit owner likewise may not withhold payment to the association. . . . It would*

also have a devastating effect upon countless condominium associations that rely completely on the payment of common area charges for their very survival." [But, where are the offsetting constitutional protections against HOA abuse? Where are the checks and balances of good democratic principles?]

16. NC LAC (2013) speaks of HOA manager training and ethics, but its classes exclude any reference to good government, Government 101, etc. "CAI prefers self-regulation of the profession. That is why the members of CAI created the educational training programs and designation programs throughout the past four decades. However, if a government regulated program is inevitable, CAI's policy is that the program have adequate training and professional development, an objective examination and enforcement of standards of professional and ethical conduct; all specifically for the profession of managing community associations." [Does 'professional development' include requirements for a good city manager?]

17. PA LAC echoes CAI's commonly advanced *survival of the HOA first and foremost* objective in opposing SB 1302 (2014), which offers democratic procedures giving members a greater voice in budgeting, and in approving conditions and terms of fines,

"To require that assessments, fines and penalty amounts be approved by the membership at an annual meeting is thus unnecessary, and inconsistent with existing consumer protection provisions of the Act. Furthermore, such a change would seriously impact an association's ability to maintain the revenue necessary to cover the expenses of managing the community."

18. PA LAC opposes several 2014 bills regarding transparency – open meetings and access to records – as found in public government statutes. Another example of the fear mongering of the demise of HOAs occurs when legislatures seek to provide equal protections of the laws to the people living in HOAs. It is also another example of the need for restrict individual liberties in order for the HOA to function.

"There are two fundamental, and erroneous, assumptions which appear to be the underpinnings of this legislation: that associations are all the same and that associations are similar to municipalities. A thorough review of associations in the Commonwealth of Pennsylvania would reveal that neither assumption is accurate and the adoption of this legislation, in its current form, will likely have several unintended consequences that will adversely impact the ability of associations to function properly."

"Issues including the . . . use of recording devices and enforcement provisions will have a chilling effect that will discourage volunteers from serving on boards of community associations."

19. TN LAC echoes CAI HO's program against fine limitations, automatic liens and free speech. Again, what's good for the HOA counts regardless of a fair and just treatment of homeowners. "As Chairman of the Tennessee CAI Legislative Action Committee . . . I would like to immediately bring to your attention some very disturbing legislation. This bill if passed will: potentially jeopardizing the financial solvency of associations [having to file liens as they

occur would break HOA bank?], Limit the amount an association can fine for rule violations [and dampen the HOA's punishment, coercion and intimidation efforts], Prohibit associations from enforcing covenant restrictions with regard to political signs."

20. **VA LAC** (consists of VA, MD DC chapters) protects homeowners and provides accurate information to legislators and is "is a committee of Community Associations Institute (CAI) a national not-for profit educational and resource organization dedicated to fostering vibrant, competent, and harmonious community associations."

- The VALAC is comprised representatives of the three CAI membership categories: Volunteer Leaders (CAVL) which are homeowners, board members:
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- VALAC has become the recognized resource for providing accurate, timely, influential input to Virginia legislators.

Note: Looking at the history of CAI we discover that CAI was formed in 1973 by ULI and FHA to deal with the HOA legal scheme as found in the HOA "bible," *The Homes Association Handbook* (1964). Its mission, then, was to educate HOA managers and directors. Some 20 years later in 1992 CAI became a business trade group to deal with criticisms of HOAs by political scientists in various research journals and books.

We can conclude that, over the 40 some years of CAI's existence and the continuing legal issues with HOAs, that 1) the HOA legal scheme is fundamentally flawed and beyond repair like the *Articles of Confederation*, and/or 2) a concern that CAI's educational materials and instruction are also flawed and is a contributing factor in the continuing existence of 40 years of HOA problems.

Furthermore, CAI is a business trade organization, a tax exempt 501(c)6 nonprofit servicing its members to better serve the public, not an educational 501(c)3 nonprofit. CAI does not inform subscribers or viewers of this fact. A business trade group does not educate the consumers of its members' services, which would constitute a conflict of interest and a violation of its tax exempt status.