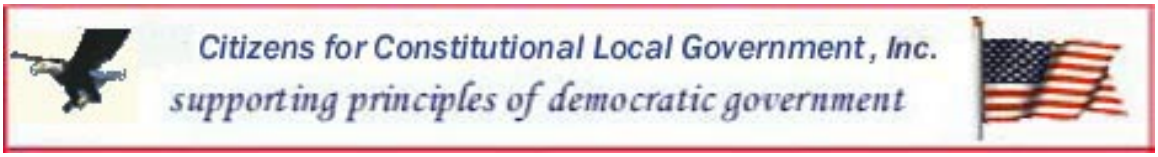

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Statement to the Arizona Government Committee Informal Hearing on SB1330, April 30, 2007

Submitted by: George K. Staropoli

A Short History of Arizona HOA Legislation: Government Interference In Private Agreements

Thank you Chairman Harper for this informational hearing.

Good afternoon committee members. I'm George Staropoli, Pres., Citizens for Constitutional Local Government, and a homeowner rights advocate for several years now. I host several internet web pages on HOA matters, and I review the OAH decisions in regard to HOA complaints. I'm quoted and interviewed now and then in the media, here and across the country. I have been acknowledged and referenced in a number of books and papers, such as the AARP Homeowners Bill of Rights, Robert Nelson's 2005 book, *Private Neighborhoods*, where my Homeowners Declaration of Rights read before the Arizona HOA Interim Committee in September 2000 is briefly discussed, and the 2006 West Group legal treatise, *California Common Interest Development – Homeowners Guide*.

In order to arrive at an informed decision regarding SB1330, and SB1340, you need to understand that these bills are just but two trees in a much larger forest. Allow me a few minutes of your time to step back and see the forest through the trees.

In 1996 the entire ARS 33-1807 dealing with liens for assessments and fines, foreclosure and the removal of the homestead exemption was added to the Planned Communities Act. Substantial amendments were also made to the other sections of this Act. Subsection A of 1807 began with, *"THE ASSOCIATION HAS A LIEN . . ."*, which is still in effect today. Subsection C ended with, *"The lien under this section is not subject to chapter 8 of this title",* which is the issue at hand today. Subsection E of this statute reads, "*RECORDING OF THE DECLARATION CONSTITUTES RECORD NOTICE AND PERFECTION OF THE LIEN. FURTHER RECORDATION OF ANY CLAIM OF LIEN FOR ASSESSMENT UNDER THIS SECTION IS NOT REQUIRED"***,** which essentially remains in effect today.

In one swift act the legislature 1) created a statutory lien against homeowners for failing to pay assessments or penalties; 2) surreptitiously removed the homestead protection from the statutory, nonconsensual lien with the harmless looking wording that only referenced a "Chapter 8 of this Title", thereby creating a classification of homeowners denied their homestead protection; and 3) denied the homeowner proper due process notice of the lien by means, once more, of the constructive notice of the declaration as sufficient to satisfy the legal requirements of the recording and perfection of the lien. It was a bad day for the rights of individuals as a result of these special laws for private entities, not applied equally to all citizens, and in violation of the Arizona Constitution.

The national lobbying organization for the HOA industry, CAI, has continually opposed the application of the constitution and state laws that provide for the protection of homeowner rights. In 2004, Rep. Chuck Gray was able to pass HB2380 into law, which required buyer disclosure and acknowledgement of the loss of his homestead exemption (*"I ALSO UNDERSTAND THAT BY ACCEPTING THIS CONTRACT, I MAY BE GIVING UP MY RIGHTS TO THE HOMESTEAD EXEMPTION PROTECTION").* In 2005 this disclosure and acknowledgement was removed from the statutes, with the lobbyist from AAR stating, in support of the removal, "We don't want agents having to explain what the homestead exemption is all about." If not the licensed agent was is required by law to have knowledge of real estate, agency and contract law, and is granted authority under the Arizona

Constitution to prepare legal documents relating to real estate sales, who then? The average, uninformed homebuyer?

In 2004, Rep. Gray also proposed, in HB2377, the adjudication of HOA disputes by means of the Justice Courts. All of a sudden CAI's claims of "95% of the HOAs are good" turned into another fear mongering tactic that this would cause an overwhelming number of homeowner complaints that would swamp the legal system making it too costly. This year we find in fact and not in empty statements, with the passage of the 2006 HB2824 giving the OAH the authority to adjudicate HOA disputes, that over 50% of the complaints, not 5% as tossed in the air by CAI in all those prior years, were won by the homeowner. And, furthermore, it's estimated that the HOA complaints would only amount to a tiny 1.7% of all the complaints heard last year by OAH. Yet, opponents to homeowner rights managed to require a payment of $550 to file a complaint, now up to $2,000 for multiple counts, while over 78% of the OAH complaints required no fees. Why is it that homeowners are being forced to pay for their justice?

In 2004, CAI unsuccessfully opposed HB2402, a repeat of the failed HB2307 of 2003, which removed foreclosure rights for the nonpayment of HOA imposed fines. CAI argued a "doom and gloom" scenario, as we are hearing today with respect to SB 1330 and SB1340, and opposed the removal of the right to foreclose. It claimed that the lenders would no longer be willing to provide loans. *"There is significant question as to whether the federal government will continue guaranteeing those loans"*, if foreclosure rights were removed, and made mention of a letter. It reminded me of Sen. Joseph McCarthy waving a letter in his hand and shouting, "I have a letter in my hands . . ." I read that letter from Fannie Mae a little while later, and it in no way threatened to stop making loans to homeowners for any reason whatever.

HB2402 also sought to require foreclosure sales to be at market value, also repeated from the 2003 HB2307 bill. This year in response to SB1340, we see the same faulty logic that opposes fair market sales. It appears that CAI fails to see the obvious error in its argument against this

requirement even as it provides misleading examples in its Call for Action email flyers. The more equity, the better the chance for the HOA to receive payment for its debt since it's in second position. I can find no instance, today, of an HOA up-fronting the payment of the mortgage in order to obtain its homeowner debt, so what's the beef with CAI's opposition to fair market sales? It's in the best interest of the HOA to require fair market sales.

Today, the opposition to constitutional protections for homeowners continues. (In 2006 a CAI national amicus brief filed with the NJ Appeals court warned the court against "*the unwise extension of constitutional rights to the use of private property by members . . .*" in the Twin Rivers HOA suit where the court declared HOAs as "constitutional actors" under the NJ Constitution).

Today we again hear the unsupported allegations of "doom and gloom" if the homestead exclusion is removed, or if foreclosures are required to be at fair market value. I think it's time that those who are opposed to these bills take a good look at the national lobbyist organization for HOAs, CAI, that has no HOAs as members, and has members from only 5.9% of all HOAs across the country. It's time to take a good look at the statements and wild claims made by these interlopers with a personal agenda, the HOA lawyers and management firms, and their affiliated associations of management firms, and those board members who have identified with CAI policies against their fiduciary duties to their members. They do not represent their members as you elected legislators represent your constituents. Not at all. HOA directors have no such authority within state law or within their private constitutions, to speak as if they reflect the will of the individual member who has lost what he thought were his constitutionally guaranteed rights.

Please pass SB1330 and SB1340. It is the right thing to do in support of the rights of individuals under the Arizona Constitution. They are long overdue. Thank you for your time.

George K. Staropoli