



Petition to State Legislators

Arizona

(Specific application to SB1340 on p.3)

Preamble

Over the past 30 years Americans have witnessed the rapid proliferation of subdivisions whose inhabitants are governed by private, nonprofit corporate membership organizations collectively known as HOAs. These subdivisions include property owned in common by the HOA requiring the mandatory membership of the homeowners and requiring the compulsory payment of assessments.

These HOAs are permitted by the states without requiring the protection of homeowner rights under the US Constitution and its Bill of Rights, or under state constitutions with their Declaration of Rights. These HOAs are indeed a bona fide government since they regulate and control the people within their territorial boundaries, but are not chartered under their states' municipality statutes. They are, therefore, not de jure public governments, but de facto governments with the right to deprive homeowners of their property.

Whereas, in every stage of these oppressions we have petitioned for redress in the most humble terms, our repeated petitions have been answered only by repeated injury;

Whereas, in the 44 years since the publication the Urban Land Institute of the manual, *The Holmes Association Handbook, TB#50*, for the promotion, advertising, selling and development of planned communities with a mandatory private governing body, the homeowners association or HOA, and with the compulsory payment of assessments, there are some 18.8% of the US population living under these private governments; and **whereas** this group exceeds the percentages for both the Black and Hispanic minority groups whose rights and freedoms are protected by numerous laws, there are very few, if any, federal or state laws protecting the rights and freedoms of the people subject to the control by these HOAs, and those existing HOA laws and statutes only serve to protect the private organization over the rights and freedoms of the people;

Whereas, TB#50 paid almost no attention to the proper establishment of an American system of democratic government but instead employed a corporate form of governance, requiring only a single democratic right of the homeowners, the right to a vote

in the management of the HOA, for fear that the authority of the HOA to enforce the Declarations may be found invalid; and *whereas* state legislatures have been opposed and highly reluctant to subject these HOAs to the laws of the land the constitutional guarantees of due process and the equal protection of the laws; and *whereas* the promoters of these authoritarian regimes operate under an unspoken agreement in support of a scheme to treat the HOA not as a proper and bona fide de jure public entity, and that the purpose of this scheme is to exempt HOAs from the constitutional restrictions and protections of fundamental rights and freedoms that serve as our American system of government;

Whereas, in 1973, only 9 years after the introduction of TB#50, the ULI and the National Association of Home Builders created the Community Associations Institute, CAI, to deal with the faulty foundation of planned communities, to educate and explain the HOA concept, and to help operate and run these private governments under the authoritarian constitutions known popularly as the Declarations of CC&Rs; and *whereas* CAI has come to support these planned communities and HOAs as independent city-states and principalities that are not subject to governmental restraints of the US and state constitutions; and *whereas* CAI has promoted the adoption of a national, local private government charter commonly known as the Uniform Common Interest Ownership Act, UCIOA, that is a direct descendant of the profit motivated, real estate interest guidelines and principles set forth in the 1964 manual, TB#50;

Whereas, it is generally recognized and accepted that the residents of a subdivision ought to take a pride and joy in their community, and actively participate in maintaining the common area and private properties, and that the voice of the local community is an important ingredient for the proper functioning of a democracy; and *whereas* it is commonly recognized that the government has a legitimate interest promoting the general welfare and in promoting such community spirit and involvement, and may create laws and regulations to that effect and purpose; and *whereas* this nation and state are a land of laws under the US and state constitutions that recognize the fundamental rights of the people, and that the government or a majority of the community may not trespass on these fundamental rights and freedoms; and that in this regard the Founding Fathers expressed concern relating to the tyranny of the majority and the tyranny of the legislature;

Whereas, the real estate interest promoters of planned communities and HOA private governments have vehemently and repeatedly opposed state legislation to restore the fundamental rights and freedoms of homeowners by the selective treatment of HOAs as either a government entity warranting the same privileges and protections afforded to public entities, but not subject to the same restrictions and penalties as are public entities; and while in other instances as necessary to preserve the status quo of the authoritarian HOA regimes, to treat the HOA as a business operating under the corporation laws of governance and shareholder rights and restrictions;

Whereas, the unspoken alliance by the real estate interest promoters of planned communities and HOA private governments have deprived unsuspecting homebuyers of their fundamental rights by means of the un-American UCIOA model act and the derivative state laws and declarations; and *whereas* the various misleading, incomplete and biased state HOA disclosure documents fail to disclose the impact of their authoritarian, corporate HOA government on their rights, that the disclosure documents fail to disclose the declaration's lack of recognition of homeowners rights, that these documents also fail to provide for the protection of these rights, and that the state authorities will not interfere with a private agreement leaving it to the individual homeowner to enforce state laws that, as all laws do, protect the public interest;

Whereas, the courts and the recognized common law authority, the *Restatement of Laws*, have usurped the US Constitution as the supreme law of the land by holding the doctrine of equitable servitudes and covenants running with the land superior to the US Constitution; and ***whereas*** the legality of constructive notice under equitable servitudes has permitted covenants within the CC&Rs to bind unsuspecting homebuyers to provisions that clearly create unconscionable adhesion contracts, and that include the surrender of unspecified rights and freedoms without the express consent of a fully informed and knowledgeable buyer; and ***whereas*** such treatment of the people subjecting them to an authoritarian system of government that holds the maintenance of property values first and foremost above the rights of the individual homeowners is an abomination to our American system of government;

And whereas in regard to SB 1340, in consideration of all of the above as a scheme to excessively punish homeowners failing to pay assessments, and to intimidate homeowners into compliance with the HOA government, industry specialists continue to oppose the sale of foreclosed homes at fair market value; **and whereas** the institution of these private governments with misleading pronouncements of creating productive and vibrant communities fail to act as a good citizen of the state and in a socially responsible manner; **and whereas** such a requirement serves to benefit the HOA since it is in second position and must pay off the mortgage balance; **and whereas** the HOA in practice discriminates against those homeowners with substantial equity and do not foreclose on those homeowners with inadequate equity;

It is Resolved,

That the Senate pass SB 1340 to right the wrongs perpetrated by the Industry sponsored statutes of the Planned Communities Act of 1996, to treat the citizens of Arizona, who are more and more compelled by misguided municipalities to live in an HOA, with the respect and dignity they rightfully deserve, and to provide a just and an equitable relief to the financial difficulties of these homeowners who are forced into positions whereby they cannot make assessment payments and do not intentionally act to not pay their assessments;

We, therefore, are members of U-C-I-O-A, Arizona Chapter, and having had individually voiced our concerns in the past, by our signatures in counterparts, have united in full support of this Petition.

Signed: (as evidenced by my email address) .

Print name: George K. Staropoli .

City, state: Scottsdale, AZ . Dated: June 8, 2007 .

Ecc: Arizona Senators