



OPEN LETTER TO TERRAVITA CA MEMBERS

Understand what a YES vote means for Terravita and your image as a citizen

March 2013

Summary

The writer provides an example of how HOAs create a dysfunctional, un-American community, using arguments against the adoption of CC&Rs amendments on two occasions by the Terravita CA in Scottsdale, AZ. In the first instance, amendments that violated Arizona statutes in regard to the content of the ballot were approved in 2010. One non-disclosed amendment made significant reductions in the requirement for adoption of future CC&Rs amendments, from a supermajority vote to a minority vote. (In 2011, the Legislature defeated a CAI drafted bill that would allow for minority control of HOAs).

The current amendment reflects an undisguised intent to punish one member for filing Office of Administrative Hearings (OAH) Petitions against Terravita. Attorneys are not awarded fees at OAH because they are not required, yet the poorly constructed amendment removes attorney fee awards in civil court actions. As a result of the approval of the non-disclosed “minority control” amendment in 2010, a minority of only 307 out of 1380 votes will be required to adopt this Board approved punitive amendment.

Without any prior open discussion or debate, the distributed Absentee Ballot is one-sided in favor of the Board without opposing arguments. Adopting these amendments by a minority of members reflects an un-democratic and dysfunctional culture within Terravita. The objectives of the “corporate state” are primary and individual property rights are secondary. Members are urged to reject the amendments.

Arguments against adoption and to restrain dysfunctional conduct

In an earlier Commentary, [Creating dysfunctional communities through HOAs](#), I made the argument that HOAs are dysfunctional because they violate the norms and traditions of a democratic America. An appropriate case study involves the approval of CC&Rs amendments by a membership concerned more with HOA objectives, than the adverse effects on member rights and freedoms. And that even incur greater and unnecessary HOA costs. Costs that are funded by their assessment charges.

In 2010, the 1380 members in the Terravita Community Association, Scottsdale, AZ, overwhelmingly approved a complete rewrite of their CC&Rs that was submitted in violation of the Arizona statute, ARS 33-1812. (I commented about this event in "[Terravita HOA vote reflects "my HOA can do no wrong"](#)"). The statute required the ballot to explain each and every change to the CC&RS and allowing a vote on each change. It was not done, apparently because it would be too costly to obey the law. It seems the members didn't object to a violation of the statutes and voted in favor of the numerous changes. I guess because the attorneys said nothing about a violation of the law, except for one whistle-blower member who repeatedly tried to bring reality to his fellow members.

Among other things the amendment contained a number of questionable changes that did not favor or protect homeowner rights. One change that directly affected a member's rights changed the number of votes required to adopt an amendment. The required number of votes dropped drastically from 920 votes to a minority of only 307 out of 1380 votes as a result of a non-identified change. The change altered the voting requirements from "of the membership" to "of votes cast" (2/3) with a 1/3 quorum.

What happened here was a complete turnabout, by the CAI member HOA attorney, from insisting that HOAs are democracies where the voice of the majority prevails. Instead, arguing that the CC&Rs must be changed, minority voting was put into effect and approved by the membership. It is understood that in many instances of nonprofit and civil government elections "of votes cast" is used. **However, the requirement to change a constitution or a charter continues to be a supermajority of all the members.**

(It should be noted that in 2011 the Arizona Legislature defeated a CAI drafted and promoted "minority control" bill, HB 2441, which would have allowed all HOAs to adopt a minority vote requirement to amend the CC&Rs).



Now, another amendment is being submitted to the Terravita members, one that is clearly a selective act of revenge against the 2010 whistle-blower, and in doing so subjects the HOA to increased litigation costs. The CC&Rs amendment is designed to punish this member for bringing just 2 petitions before an administrative law judge at the Office of Administrative Hearings, where attorney fees are not awarded — presumably because attorneys are not required and an OAH hearing.

In other words, it's the decision of the HOA board to spend unnecessary funds for an attorney not needed at the Hearing. **Are these OAH cases so weak that the board feels the need for an attorney?**

And yet, the Absentee Ballot (Q & A) dares speak of "*amicable*

solutions” and to “to create a financial incentive for Owners to settle complaints and disputes ... through dialogue, not expensive litigation” (more on the absence of “openness” will be found below). The Board continues with, “In the past, the Association has incurred costs of over \$35,000 in attorneys’ fees for hearings before the ALJ [at OAH].” I must assume that the members are not aware that the current issue before the OAH, to which the Board comments as being very costly, is in regard to providing corporate records on the amount of the agreed to HOA attorney’s fees? Why is there such reluctance to obey the law and provide corporate records, and attorney fee records are not privileged materials.

But, in an apparent blind rage, which was approved by the Board, the proposed poorly worded amendment removes the existing provision for the prevailing party to be awarded attorney fees in “legal actions” — a defect easily caught if the amendments were open to discussion and debate amongst the members. In other words, in order to get HOA attorney fees paid by the member in OAH hearings, “the powers that be” removed the covenant to award attorney fees in civil court where litigation costs are much, much higher. Can you believe it?

Furthermore, a 22% minority vote of the membership is all that is needed to bind the all the members. **That’s less than the 25% requirement to remove board members under the law.** This act of revenge is a prime example of what can happen as a result of CC&Rs that allow for a minority vote to adopt amendments. It would be a blot on the residents of Terravita if a minority vote were to carry this act of revenge that would cost the members financially in the long run

Do not talk to me about democracy in HOA-Land! As clearly presented by the actions of the Terravita membership and board, Terravita is a case study that well exhibits very same dysfunctional behavior found in many other HOAs throughout the country. “Dysfunctional” as used herein pertains to behavior, values, principles, and actions by the members that demonstrate a firm adherence to corporatism. HOA corporatism places its goal and objective to maintain property values first and foremost and individual rights and freedoms are secondary.

For some 10 years I have been trying to find a satisfactory answer as to why homeowners in HOAs adopt a blind obedience to whatever their HOA attorney influenced board promotes. This support for corporatism is what is occurring in Terravita. It is dysfunctional within the HOA and within the greater community. In its Absentee Ballot, the Board has provided its view on the amendments, which cannot be otherwise than a “Yes.” There has been no discussion or debate on the amendments as expected in a democratic society. Nor has the Board provided those opposing the amendments a just and fair opportunity to voice their opinions in the same Absentee Ballot materials as distributed to the members.

Understandably, given this “sign and shut-up, we told everything you need to know” approach, members will just go along with the Board and adopt these harmful amendments. However, it is

the members who must demand a clean elections process to ensure democratic processes are at work, where transparency and openness are truly the standard. Why isn't there an information booklet, as we see with public elections, where pro and cons and a detailed presentation of the propositions and/or amendments are made?

The Terravita members must exercise their fundamental obligations to restrain the board from imprudent and irresponsible actions. Rejecting this amendment will send a message to your Board that enough is enough!

Respectfully submitted,

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Further reading

[The HOA apathy affliction: a political dynamic](#)

[The role of the HOA apathy affliction in circumventing public policy](#)

[Why do people harm others in HOAs?](#)

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