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The CAI College of Community Assn Lawyers member, by Scott B. Carpenter, had cows on his mind when he wrote about [The Tragedy of the Common Elements](#). Somehow he stumbled upon a 1968 article about one herder's cows damaging the common grazing area used for the benefit of all the herders, making an analogy to some "grazing amenity." He then jumps to HOAs with their common areas, basically the amenities. I stopped, and being somewhat familiar with Mr. Carpenter's prior pronouncements, wondered where he was going.

Could Carpenter be confusing people with cows, and in following his herder story, that the overuse of the amenities by a lot owner's family ruins it for the other members? Is he arguing for some "pay as you go" major principle underlying the legal HOA scheme? "Your fee for pool usage is good for only 24 hours per month, and no carry-overs to next month." Does he mean, and apparently he hasn't considered this other view, that members NOT using an amenity should not pay for its upkeep -- and there are sufficient complaints from current owners about this inequality of communal HOA living.

Well, in spite of this alternate reality view by Carpenter, I decided to read on for anything of substance, but encountered a legal micro-analysis of a roof being damaged in a condo association. Here, however, Carpenter gets to his main point: forgetting insurance and any fault that could be attached to the affected homeowner, should the homeowner alone foot the bill for damage only to his roof? He is concerned about Arizona law, ARS 33-1255(c)(2) that defers to the CC&Rs as to whether or not the homeowner affected by a damaged roof should alone pay for the cost of repairs, and that there should be no recourse to having the HOA pay out of its common funds. He seeks to extend this statute to planned communities.

The "*tragedy*" he speaks of appears to be a question of scarce money in a tight economy. However, there is no discussion of past failures to provide for adequate reserves, or to raise assessments to cover these contingencies, although this is occurring today with respect to foreclosures.

Based solely on this one possible event that may lead to use of the common HOA funds, Carpenter then makes the argument that the very philosophy of condo living with its communal structure is itself "***the very philosophy that feeds the Tragedy.***" Say what?? He had defined the tragedy as "*a dilemma in which individuals acting independently in their own self-interest can ultimately destroy a shared resource even where it is clear that it is not in anyone's long term interest.*" Once again I'm perplexed! What's his point? What is he trying to say? His arguments do not even involve a homeowner acting in his own self-interest, but accepting the provisions in the CC&Rs and state laws! What's the real issue here?

Perhaps it's the realization that the condo and planned community legal scheme is defective? That it does not even work for the benefit of the fictitious person, the HOA, responsible for the prudent governing of the association's assets? And, if the homeowner will not ante-up and meet the financial responsibilities of the HOA, it is doomed to failure, which is proving to be the current scenario. So, once again the homeowner is asked to surrender his rights to the communal financial benefits of the HOA for the survival of the HOA. The motives of the CAI attorneys clearly demonstrates its lack of concern for the protection and just treatment of the homeowners who are the source of the HOA's existence. They may be sacrificed for the good of the state, the HOA.

There is no "quid pro quo", no benefits, no protections, offered to the homeowner in exchange for this surrender. Just give it up. More accurately, get the legislators to take away this right contained in the CC&R contract. Just let the government interfere with the agreement and wipe it out. All for the survival of the HOA, not the individual member.

I believe Carpenter realizes there is an inherent defect in the legal and social structure of the HOA concept. I believe he realizes that in order to make the HOA concept more acceptable, the promoters had to deny reality. Prudent financial management requirements, such as setting aside reserves, and reserves for a specified amount of "non-payers", need not be mentioned. That would be a turn-off to sales. But, it has now come to haunt the pro-HOA supporters -- and CAI being by far the first and foremost. It's time to pay the piper! However, getting the individual pay, like with the disastrous advice on foreclosing on people who cannot pay anyway, is doomed to failure.

It appears then that CAI is heading to the Legislature to make this systemic alteration in the HOA legal scheme a law, a law that mandates that the individual "take the hit" and pay out of his own funds, and not from the collective "social security" common funds of the HOA. In the tradition of pro-HOA attorney lobbyists, reaching way out to make a weak case, Carpenter then asserts an unsubstantiated claim that those homeowners can't be trusted and that they are out to get us! He writes, *"This would solve the problem of unit owners having an incentive to foist as many unit expenses onto the community association as possible."*

This proposed change is outrageous! The very nature of planned communities will be turned upside down on its head if Carpenter's views are accepted. And yet Carpenter has the audacity to acknowledge that the existing law and his proposal do not address the case of negligence or intentional disregard by the board. In other words, the homeowner will always pay for board negligence. The existing law simply defers to the CC&Rs while his proposal mandates the financial burden on the homeowner in all cases! He claims that existing CC&Rs to "share costs" by means of common fund coverage is unfair and unjust, and should not be used in order to save funds for the HOA's survival. He concludes with the anti-homeowner view that this proposed change in the laws "will better preserve finite resources in community associations and slow the inevitable decline of scarce shared resources."

To be clear, Carpenter seems to be accepting the fact that the HOA is incapable of establishing sound financial management techniques that require increased assessments from the membership. That would be admitting a resounding negative to the HOA scheme, and negatives are taboo. Establishing such reserves would then demand strict financial accountability by the HOA board and its management firm, which CAI has adamantly refused to allow. "Trust the management" has been its propaganda.

Given this failure to establish reserves, we find that the boards are either unwilling themselves to increase assessments, and when they attempt to meet their financial obligations they are met with hostility from the membership. Not a good workable environment; not a good workable concept. It seems that the CAI answer to these problems is to deny the communal nature -- the acceptance and sharing of common resources for the common good -- that is the very foundation of common interest properties and communal living, as advertised and promoted by the pro-HOA special interests.

CAI offers unworkable solutions that are divisive and adversarial: go after the individual homeowner. Forget about "we are in this together" and "we are a community." The survival of the HOA is paramount! Forget about the American spirit that made America a great country. No more let's help the Jones build their barn, or take care of the Smith's children while their mother lies very ill. No, the individual must support the interests of the state, the HOA, and the corporations that support the state, the HOA attorneys and management firms. (It's bad enough that the homeowner has unknowingly pledged his home as collateral for the HOA's survival).

**When will homeowners, the media, the public, and the legislators understand and accept that CAI has its own personal agenda, which is not in the best interest of the people or the state?**