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By George K. Staropoli

The UCIOA bill of rights is a mockery of homeowner rights protection

After being in existence for some 24 years, the national commissioners felt the need to add a homeowners bill of rights to UCIOA, responding to outcries from homeowner rights advocates, and others such as AARP, for the need to protect homeowners. However, a quick glance at the committee draft of the supposed UCIOA Homeowners Bill of Rights Act for homeowners reveals the now all too familiar industry redefinition of common words -- label it according to what they want to hear, but give homeowners only token changes.

These proposed amendments bring to mind Hans Christian Andersen's fairy tale, *The Emperor's New Clothes*, and more specifically, the negotiations between India's demands for independence against the British. Gandhi is offered token reforms to appease demands for true local government. He replies that they are unacceptable. A British officer retorts with, "Hear, hear! India is part of the British Empire and" Gandhi cuts him off with, "India belongs to the Indians!"

HOAs belong to the homeowners, not to the industry business trade groups attempting to subject homeowners to special state laws that create private, authoritarian governments under UCIOA, permitting HOAs to remain outside the application of the Fourteenth Amendment to the US Constitution.

Furthermore, an effective and relevant bill of rights to protect homeowner interests from those of the legally separate HOA corporation is necessary for the following additional reasons:

1. HOAs differ from the common charitable nonprofit organization by virtue of mandatory membership and compulsory dues, with the right of the HOA to take private property for violations of the HOA "laws", while violations by HOA boards go unpunished.
2. HOAs are not public businesses, as the national trade group promotes, but, if at all a business, are more similar to small, privately held businesses where entry and exit by the stockholders, the homeowners, is severely difficult. With a public company, a person need only call his broker and buy or sell his stock. With an HOA there is the entire process of relocating, perhaps finding a new job, new schools for the kids, new friends and neighbors all of which have costs beyond monetary costs, etc.

3. HOA boards regulate and control the people within a territory and are a de facto political government (see Black's Law Dictionary, "de facto government, 2"). Any person or entity seeking to control and regulate the people within a territory, such as many religious sects or "militant separatists", need only create a subdivision to escape the application of the US Constitution and state laws.
4. Failure of state agencies to protect buyers by means of the full disclosure by warnings and notices, as well as state laws, of all material factors and consequences of living in an HOA. The average homebuyer believes that the Constitution and state laws protect him as if the HOA were a public entity, and not a business -- he can call the police or state attorney, for example.
5. More and more municipalities are requiring new development with an HOA while failing to protect the rights and freedoms of homebuyers. Living in a non-government new home is no longer becoming an option.

Section 4-103 of UCIOA remains unchanged and not included in the Act. It pertains to public disclosure, but lacks any of the warning notices as contained in "10 Myths About HOAs" (see exhibit A) that would alert potential buyers to the new condition, obligations, legalities and loss of rights when living in HOA-land, since we know that HOAs are outside the Fourteenth Amendment protections.

This proposed Act contains other major deficiencies:

1. failure to disclose that the courts treat HOAs as a business and not as a community government;
2. excessive punishment by means of foreclosure is allowed;
3. unsatisfactory due process procedures for adjudicating disputes over violations remains;
4. inadequate fair elections procedures continue to exist to insure a democratic government;
5. buyer protections by means of full disclosure of the loss of buyer rights in an HOA are still not provided for;
6. failure to provide for effective penalties, as a detriment to repeated actions, against boards who violate state laws remains absent from this bill of rights; and
7. permits constructive notice to serve to bind the surrender of fundamental rights and freedoms, without explicit buyer awareness of, understanding of, and agreement to the consequences of this purchase.

Just reading the first line of the Act's Section 19 below, and I am sure that homeowners, like this writer, will recognize similar wording in their state laws and in their CC&Rs pertaining to foreclosure. How dare the industry declare that HOAs are the expression of the local community, free of any pressure, stress or coercion while attempting to impose a top-down state mandated special laws on these "expressions of local community". How can the following

section, which allows foreclosure for fines with attorney fees included as assessments, be considered an example of homeowner protections?

SECTION 19. LIEN FOR ASSESSMENTS; FORECLOSURE.

(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorneys fees and court costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) and any other sums due to the association under the declaration, this [act] or as a result of an administrative or judicial decision are enforceable in the same manner as unpaid assessments under this section.

The foundation for these amendments remains the oppressive, “adhesion contract” nature of these covenants that are biased in favor of the HOA! Any mediation or adjudication of these laws and CC&Rs cannot result in a just and equitable resolution of differences! Perhaps the national commissioners fail to understand what a bill of rights is, not being government or politically oriented, but real estate oriented. Allow me to quote the Preamble to the US Bill of Rights:

THE Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution

Where, in this act, is there a similarly worded preamble?

Where, in the UCIOA bill of rights act, are the delineated and expressed homeowner rights not to be violated? Where are the restrictions on the actions of HOA boards and committees? Where are the procedures and safeguards to protect civil, fundamental and constitutional rights of homeowners that are provided under civil governments?

All that is needed under the heading of a bill of rights is the simple statement, absent from this so-called bill of rights that reads:

Whereas, homeowner associations are indeed quasi-governments possessing many of the powers and functions of public government, including the right to take the homeowner’s property, to fine and issue monetary penalties, and to set and enforce rules of conduct pertaining to a homeowner’s private property;

And whereas, the laws of the land are required to be applied equally to all citizens;

Therefore, homeowner associations are subject to and bound by the Fourteenth Amendment to the US Constitution as if there were a public entity.

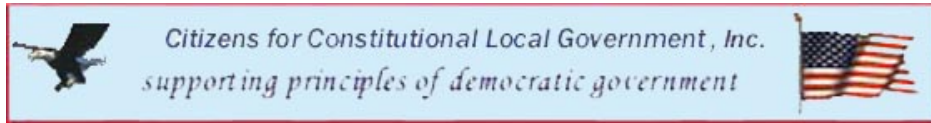
In one simple statement, HOAs would be placed on the same level as public government, no longer claiming a special status as exempt from the Fourteenth Amendment that protects

homeowners, and holding HOA governments to the same requirements of accountability as public governments, no longer enjoying a preferred, unconstitutional position of special state laws. This statement will allow covenants, rules and regulations, and assessments to remain unique and individual to specific associations, so long as they do not violate the Fourteenth Amendment. But, the homeowner would now have the force and power of the state to enforce the laws against HOA violations of the law as with any violation by a public entity or official, rather than to permit government agencies to sit by as an observer to repeated reports of HOA abuse. This enforcement, as a public entity, is only proper since the state has mandated homeowner compliance to these oppressive private constitutions called CC&Rs.

No, this homeowner bill of rights are the “new clothes” being offered by the HOA industry in a poor attempt to deflect the rising and more outspoken criticism of the HOA concept and legal structure, while continuing the state protection of private, authoritarian governments. Governments that are still allowed to operate outside the Fourteenth Amendment protections.

If NCCUSL wishes to amend UCIOA, it can do so without claiming these amendments to be a bona fide bill of rights.

EXHIBIT A. 10 Myths About HOAs



10 HOA Myths

1. **MYTH:** The HOA attorney represents you, and will assist you in your claims of wrongdoing against the board.
REALITY: The attorney represents the HOA as reflected by the board. He defends the board.
2. **MYTH:** In spite of your contractual CC&Rs, your civil and fundamental rights are still protected by the Constitution.
REALITY: As a private contract, your CC&Rs have priority over the Bill of Rights, unless those particular rights are so enumerated by the US Supreme Court, such as the Fair Housing Act. People have the freedom to contract and can surrender their rights as happens, many times unexpectedly, as stated by the CC&Rs.
3. **MYTH:** Disputes are resolved by an independent tribunal with an opportunity to examine witnesses and the charges.
REALITY: Generally, the board issues complaints and decides the issue.
4. **MYTH:** You can file a complaint with the local government for enforcement of state law violations by the board.
REALITY: HOA disputes are treated as private disputes, and local police / attorneys do not get involved. Filing a civil suit is generally required, even in the case of a state law violation.
5. **MYTH:** If unhappy with the board, homeowners can vote the board out in any election as elected public officials can be voted out.
REALITY: There are no protections against violations of the election process, nor oversight of fair elections since the incumbent board, like a corrupt political machine, controls the elections and hears any claims of voting irregularities.
6. **MYTH:** The HOA fosters vibrant, healthy communities with the general welfare of the homeowners as an important goal.
REALITY: HOAs are created to maintain property values, and to exercise police powers to regulate the use and operation of the common areas and amenities. There is no equivalent Bill of Rights to protect homeowner fundamental rights as with public government. HOAs do not have to be fair, reasonable or competent.

7. MYTH: Not actually having read, actually signed, or acknowledged the provisions within the CC&Rs invalidates its legality.
REALITY: Just the mere posting of the CC&Rs at the county clerks office is sufficient to create a binding agreement when you accept your deed.
8. MYTH: As in the case of a dispute with your credit card company, in a dispute with your HOA you can send a certified letter to your HOA and no action can be taken until the dispute is resolved.
REALITY: You must always make your payments regardless of any dispute. Buying in an HOA is equivalent to pledging your home as collateral for the timely and continuous payment of assessments. Your home can be foreclosed and sold at auction by the HOA.
9. MYTH: The home you buy in an HOA is your private property to do and act in any manner as you please that is not contrary to municipal ordinances.
REALITY: The CC&Rs represent a surrender of your property rights to the HOA, granting it broad, discretionary powers not envisioned at the time of purchase nor clearly stated within the CC&Rs.
10. MYTH: As with any other contract, you are protected by the version of the CC&Rs in effect at the time of purchase.
REALITY: The courts have upheld subsequent amendments to be binding on all homeowners regardless of when they bought their homes, and these amendments can have far reaching financial consequences beyond the reasonable expectations of the purchaser. In other words, those CC&RS can be a meaningless piece of paper.

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EXHIBIT B.

George K. Staropoli



Mr. Staropoli is an Arizona resident who has been active as a homeowners rights advocate since April 2000. He has appeared before a Nevada Legislative committee, the Arizona HOA Study Committee, and testified many times before several Arizona Legislative committees; has been active in submitting homeowner rights issues to the legislators, the media and the public. His opinions and views have appeared in the national media: *Kiplinger's Personal Finance* magazine, *CNN/MoneyOnline* and in the *New York Times*, *L.A. Times*, *Palm Beach Post*, as well as on local TV news and in the *Arizona Capitol Times*. Mr. Staropoli has been quoted in *Private Neighborhoods and the Transformation of Local Government (2005)*, AARP Policy Institute *Homeowners Bill of Rights* proposal (2006), and acknowledged in the Thomson – West legal treatise, *California Common Interest Developments – Homeowner's Guide (2006)*.

In 2000 he founded and is president of the nonprofit **Citizens for Constitutional Local Government, Inc**, Scottsdale, AZ, a nonprofit organization seeking to inform the legislators and public about common interest property issues and to expose the prevalent myths and propaganda about carefree living in an HOA. *Citizens* believes in supporting principles of American democracy.

George has published several books and videos on reforming planned communities and their HOA form of government. He is editor of *Buyer's Guide to Living in a Community Association (2001)*, and he is author of *The Case Against State Protection of Homeowner Associations (2003)*, reaching a growing audience of concerned people. The author, a veteran homeowner rights activist, makes his case against state government protection of homeowner associations. He documents, using his appearances before the Arizona Legislature, state legislative hostility toward upholding the civil liberties of homeowners with their broad, misguided interpretation of “private contract” prohibitions, and the use of statutes that favor the HOA.

His StarMan Publishing, LLC produced a 42 minute DVD, *Somewhere Over the Rainbow (2004)*, of the Arizona Legislative session documenting the loss of homestead protections and the right of the HOA to foreclose, and a 3 volume, 5 disk DVD series, *Homeowner Rights Advocacy 2006 (2006)*, documenting homeowner rights advocates at legislative sessions in Arizona and Texas.

Mr. Staropoli was a member of the CEO Club, NY, NY; served as Treasurer and board member of a Penn. HOA; and was a board member of the Valley Citizens League, Phoenix, AZ. He holds a MS in Management from Polytechnic University, Brooklyn, NY.

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