



Script Webinar May 22, 2020 – Introduction part 1

**DRAFT**

## GENERAL SCRIPT

### House cleaning

(Turn on your video to begin)

Welcome everyone. I'm George Staropoli; I will be conducting this webinar, "Restoring the Lost Constitution to HOA-Land." Is everyone settled in? Some of you may have to adjust your camera for a good look. We all can see each other and your mic has been allowed— not allowed because of the size of the attendees ~~—so you can ask questions. Please do not interrupt; just raise your hand and I will try to recognize you to speak.~~

These sessions will be no more than 30 minutes long; you can leave anytime by clicking "leave" on your computer; you can "disappear" from the video and return at leisure. Questions can be asked using the CHAT feature, but I will not be able to respond during the session unless time permits. I will email those that I respond to.

As in the case of any debate or controversial discussion, please pay attention to what is being said or not said in the quotations provided in this webinar.

## Preface

The overall intent and purpose of this webinar series is the education and reorientation of HOA members, especially the board of directors, to long ignored issues of constitutional validity; issues that the public will not find in the multitude of materials and publications of that business trade group, Community Associations Institute, CAI. The reorientation project is the first step toward the understanding and acceptance of my *Plan Toward the Restructuring the HOA Model of Governance*; it requires an examination of the role and influence of CAI in supporting and promoting the HOA legal concept and model of government. Please see the list of supplemental materials provided in this seminar.

In order to understand the deep constitutional issues concerning the HOA legal concept, general background information must be presented and understood. It's like the need to take the HOA 101 class before you can deal with the issues in HOA 201 or the highly advanced HOA 301 class. This is the purpose of this first seminar.

I am not primarily concerned with how the HOA functions in its day-to-day operations, which varies depending on the abilities and skills of the board directors. Some are very good and some are simply rogue BODs.

The results of my research have been disturbing, but understandably, that the vast majority of the members are content so long as the amenities and facilities are to their satisfaction -- keeping up home values for resale. All a BOD has to do is to keep the members happy and concerns about democratic government and loss of rights hardly enters into their thinking. **You may be saying, "So what I'm happy."** Until you dare oppose the BOD and find there is no one to help you, neither the state nor even your neighbors in the allegedly healthy HOA "community." And so, the BOD becomes an un-American, authoritarian government. **IT DOES NOT HAVE TO BE THIS WAY!**

While this seminar speaks to legalities, it also raises ethical and moral concerns with respect to why HOA-Land continues to be supported by boards of directors, HOA members themselves, and the legislators who control the laws. It seems that the ethical standards of Machiavelli dominate: Ethical conduct is that which advances the objectives and goals of the Prince, the state at that time. In 2010 the Reverend Jim Wallis wrote in *Rediscovering Values*:

“Do we want [property] values to prevail everywhere and in all things? Are there some areas of life where [property] values should not determine what is most important — personal and family relationships, ethics and religion, community and public service and social justice? Are there certain things degraded when [property values] are allowed to be the ultimate measure? Are there certain social values and practices that are higher than market values?”

### **WHY IS THERE A NEED TO REORIENT THE BOD?**

First, the legal HOA model of government is based on the private adhesion contract, the CC&Rs. Yet, all states have a home rule doctrine whereby the local community can form a local government essentially free from state legislature influence. A version of this doctrine, known as Dillon’s Rule, requires the local entity to seek approval from the legislature on certain issues. It would allow the private nature of the facilities and amenities, and local taxes to replace assessments, etc. while retaining conformity to the US and state constitutions.

The Arizona home rule doctrine, as an example of the laws (Nevada is another example) was given by the Arizona Supreme Court opinion in *Tucson v. Arizona*. Let’s take a peek:

“Under Arizona’s Constitution, eligible cities may adopt a charter—effectively, a local constitution—for their own government without action by the state legislature. ‘[A] home rule city deriving its powers from the Constitution is independent of the state Legislature as to all subjects of strictly local municipal concern.’

“The purpose of the home rule charter provision of the Constitution was to render the cities adopting such charter provisions as nearly independent of state legislation as was possible.

“Article 13, Section 2 [Arizona Constitution] requires city charters to be “consistent with, and subject to, the Constitution and the laws of the state.”

“[T]his court has uniformly held that a city charter, when regularly adopted and approved . . . supersede all laws of the state in conflict with such charter provisions insofar as such laws relate to purely municipal affairs.”

This says it all, doesn’t it? The question that follows is: Why then the insistence of a private contract that has weak support for constitutional validity? You will discover for yourself why in the upcoming webinar series.

Second, as to the structure and form of the HOA government, there is substantial support that HOAs are another form of local government – mayor-council, council-manager, and direct democracy (town hall) , except that state legislatures have refused to recognize them as such.

While the court cases have been mixed on holding HOAs as mini or quasi-governments, depending on the issue at hand, many dicta -- statements made by the judge in its opinion – have acknowledged that they have characteristics, aspects, and function of local governments. That is, they are de facto, in fact, local governments. You will find such cases in the accompanying *Table of Legal Authorities*.

a. de facto but not recognized

- b. not a municipal corporation
- c. functions or acts like a government
- d. mini or quasi governments

Third, my position after some 20 years of active involvement and legal research clearly reveals the heavy influence, indoctrination, and acceptance of the *CAI School of HOA Governance* by HOA boards, state legislatures and the media. I have defined the *School* program as the teachings, principles, values, points of view, “best practices” and the private “certifications” of HOA managers. All of which failing to address questions of constitutionality and local governments, or just providing misleading defenses for no need for government interference.

### **Critique of CAI**

Finally, realizing that many of you may object to my characterization of **CAI as the Evil Empire**, allow me to examine the role and undue influence of CAI over HOA-Land, addressing legal scheme violations of fundamental and constitutional rights and freedoms.

Getting to the nitty-gritty, let’s hear it from CAI itself with the following examples from its numerous communiques.

“In the context of community associations, the unwise extension of constitutional rights to the use of private property by members (as opposed to the public) raises the likelihood that judicial intervention will become the norm, and serve as the preferred mechanism for decision-making, rather than members effectuating change through the democratic process.” (CAI amicus curiae brief in NJ Twin Rivers, 2004).

This attitude clearly argues for HOAs as independent principalities, functioning on their own with state/federal protections. In furtherance of

local authority and no need for judicial oversight of HOA violations, the brief offered the following confusing statements about judicial scrutiny.

“The values inherent in the business judgment rule encourage self-determinative community association governance. The business judgment rule “allows an association’s board the proper degree of discretion to manage

the day-to-day affairs of the community.

“[I]t is clear that heightened judicial scrutiny under a constitutional standard is not necessary for courts to balance properly individual homeowner rights and responsibilities with the needs and obligations of the community as a whole. Homeowners are fully protected under the proper framework of judicial review from invalid or unenforceable restrictions and improper board action.”

Judicial scrutiny/review by the courts is a determination of constitutional validity under its guidelines from *necessry and no alternative* – strict scrutiny – to a *general government interest* for minor denials of rights. That is, the good outweighs the bad. I don’t think they heard of compulsory mediation mandated by many state courts to alleviate court time and expense, yet allowing for an independent fact finder to make a judgment. The BJR just kicks it back to the board that functions without any meaningful member oversight protections or punishments for its violations.

Surprisingly, CAI turns constitutional validity on its face and claims that HOAs do not violate the Constitution but are expressions of constitutional validity.

“Contrary to conventional wisdom, Americans do not waive their constitutional rights when they move into a community association. In fact, courts have found that community association residents, by enacting reasonable rules for their own communities, are actually exercising their constitutional rights of association, contract, expression and assembly. . . . By purchasing homes in association-governed communities, buyers enter into constitutionally protected agreements with their neighbors.

“The U.S. Constitution gives community association residents the right to govern their own communities without the need to get government’s permission to adopt rules. This prerogative is at the core of individual property rights and is a tradition that dates to the very founding of our nation.” (CAI news release from Oct. 2015).

The national lobbying organization continues claiming to be an education tax-exempt but working for the HOA and not the members, and contrary to the above.

“CAI is the now leading international authority for community association education, governance, and management. . . . As an education leader, we are responsible for assessing the marketplace, developing relevant training programs, and delivering professional development to community association volunteers, community managers, and business partners.” (CAI 2018 annual report, Tom Skiba, CEO).

“Our mission is to inspire professionalism, effective leadership, and responsible citizenship.”

[The following is part of the form letter CAI HQ is urging everyone to send to Congress to oppose a federal bill granting COVID-19 payment exclusions for HOA assessments. May 11, 2020]

“I am writing to strongly oppose legislation like H.R. 6423 and S. R 3565 that impose a national moratorium on debt collection during the COVID-19 national emergency.

“This legislation is too broad and will harm the financial interests of households in homeowners associations, condominium associations, and housing cooperatives (collectively, community associations).

“When one homeowner is unable to pay assessments, these costs are passed to other homeowners in the community. This increases housing costs, spreading financial distress to other community households.” [approx. 20 minutes]

## Short History of HOA-Land

Now as to being an “education leader”, CAI is **not** an education tax-exempt organization but a business trade group that serves the interests of its member attorneys and managers whose income comes from HOAs.

In 1992, 19 years after formation, CAI elected to become a business trade group, but continues to give the impression that its purpose is to educate HOA members and board directors -- the purchasers of the services provided by CAI’s member attorneys and managers. As a tax-exempt business trade group, it is not allowed to have its customers as clients, which means HOAs themselves have been removed as CAI members way back in 2005. This seems like misrepresentation to me.

Moving on --- I must speak to the background and history of HOAs in America, which is needed in order to better understand the legalities, constitutional issues, and the HOA concept as it truly functions in the real world. You will discover that it does not follow the trade group’s prescriptions and lofty advices found in its numerous public communications and materials.

The origins of the present HOA model stems from the 1964 *Homes Association Handbook* sponsored by HUD and conducted by the Urban Land Institute, ULI. Here’s the cover page of this 424 plus page handbook.



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## THE HOMES ASSOCIATION HANDBOOK

- *A Guide to the Development and Conservation of*
- *Residential Neighborhoods with*
- *Common Open Space and Facilities*
- *Privately Owned and Maintained by*
- *Property-Owners Associations Founded on*
- *Legal Agreements Running with the Land*

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"Supporting principals of democratic government"

Note who were co-sponsors at the bottom of the page.

“This bulletin was prepared under contract for the Federal Housing Administration with the collaboration of the U. S Public Health Service and the co-sponsorship of Office of Civil Defense, Urban Renewal Administration, Veterans Administration & National Association of Home Builders.”

Where are the public constitutional interest associations or think tanks?

The last paragraph of the Foreword by the then ULI President reads:

“It is our firm belief that the information and recommendations contained in the handbook will be of major value to land developers, planners, home builders, appraisers, mortgage lenders, realtors, attorneys, association officers, and public officials concerned with the planning, development, and operation of stable and attractive residential areas for the home owner and the community.”

Reads like a money-making venture with a social value attached; there are no references to questions of local government or constitutional validity. But over the course of years HOAs have been sold as, protecting the buyer’s home value, the greatest form of democracy and “care-free living.” All purchased by a real estate contract and not by a commercial business or stock contract.

This is a good time to stop and allow for questions. Please raise your hand.

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