

Testimony of David Kelman
In FAVOR of HB5511
For Judiciary Committee Public Hearing
March 29, 2010
10:00am



For full report, see AARP Public Policy Institute Paper #2006-15
In Brief prepared by Andrew Kochera, July 2006
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In Brief

**A BILL of RIGHTS for HOMEOWNERS in ASSOCIATIONS:
Basic Principles of Consumer Protection and Sample Model Statute**
Associations in common-interest communities (such as homeowners associations or condominium associations) play a valuable role in modern America, and generally operate amicably to the mutual benefit of residents. For instance, they may:

- Provide a number of amenities (such as parks, pools, and club houses) that would be difficult to procure from many cash-strapped local governments.
- Set architectural standards and maintenance requirements that help reassure residents that their investment in the community is well protected.
- Provide opportunities for neighbors to meet and socialize, helping foster a sense of community.
- Maintain private streets, remove snow, and even collect garbage, thereby relieving local governments from those burdens.

AARP Public Policy analysis indicates that in 2003, 46 percent of owners in singlefamily homeowner associations were over the age of 50, as were 56 percent of owners in condominium/coop communities.

Along with the advantages of association life, there may also arise disputes between homeowners and their association. Association rules regarding participation in the association elections process, levying of fines, and procedures for resolving disputes through an objective third party can have a profound impact on the quality and enjoyment of community life. Many disagreements and disputes can be settled rather easily, but

some can escalate even to the point where ownership of the home is at risk. The use of foreclosure as an enforcement tool is controversial (especially in states that permit foreclosure without a court hearing) and can be devastating to a household. The consequences of disputes can be particularly severe for older homeowners, whose homes typically represent their single largest asset.

The Bill of Rights for Homeowners in Associations outlines a set of ten principles (or “rights”) and model statutory language that states can follow when developing laws and regulatory procedures for common-interest communities. Additionally, associations themselves can use these principles and the concepts in the model statute explanatory discussions when developing or modifying their own governing documents. The issues addressed are applicable to all forms of common-interest communities.

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BILL OF RIGHTS FOR HOMEOWNERS

I: The Right to Security against Foreclosure

An association shall not foreclose against a homeowner except for significant unpaid assessments, and any such foreclosure shall require judicial review to ensure fairness.

II: The Right to Resolve Disputes without Litigation

Homeowners and associations will have available alternative dispute resolution (ADR), although both parties preserve the right to litigate.

III: The Right to Fairness in Litigation

Where there is litigation between an association and a homeowner, and the homeowner prevails, the association shall pay attorney fees to a reasonable level.

IV: The Right to Be Told of All Rules and Charges

Homeowners shall be told--before buying--of the association’s broad powers, and the association may not exercise any power not clearly disclosed to the homeowner if the power unreasonably interferes with homeownership.

V: The Right to Stability in Rules and Charges

Homeowners shall have rights to vote to create, amend, or terminate deed restrictions and other important documents. Where an association’s directors have power to change operating rules, the homeowners shall have notice and an opportunity, by majority vote, to override new rules and charges.

VI: The Right to Individual Autonomy

Homeowners shall not surrender any essential rights of individual autonomy because they live in a common-interest community. Homeowners shall have the right to peaceful advocacy during elections and other votes as well as use of common areas.

VII: The Right to Oversight of Associations and Directors

Homeowners shall have reasonable access to records and meetings, as well as specified abilities to call special meetings, to obtain oversight of elections and other votes, and to recall directors.

VIII: The Right to Vote and Run for Office

Homeowners shall have well-defined voting rights, including secret ballots, and no director shall have a conflict of interest.

IX: The Right to Reasonable Associations and Directors

Associations, their directors and other agents, shall act reasonably in exercising their power over homeowners.

X: The Right to an Ombudsperson for Homeowners

Homeowners shall have fair interpretation of their rights through the state Office of Ombudsperson for Homeowners. The ombudsperson will enable state oversight where needed, and increases available information for all concerned.