

**A Super Quick Look¹ at Some of the Many Legal Issues
Surrounding Home (a/k/a Property) Owner Associations²**

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¹ Due to significant time constraints, each speaker is limited today to merely 10 or 15 minutes. Accordingly, this presentation is very incomplete by strict necessity.

² I would also like to take this opportunity at the beginning of my remarks to publicly recognize the invaluable assistance of my research assistant, **Tom Haffney**, a current law student at the University of South Carolina School of Law, who has played an invaluable part in putting together some of these materials. Of course, the final responsibility is mine.

³ As part of my own personal **disclosure** I want the Committee and the public to know that at various times prior to today I have been asked to assist and represented Home Owner Associations (HOA); at other times in a different setting, I have been asked to represent Individual Home Owners with disputes against HOAs; at yet other times I have represent Real Estate Developers; and finally I have in the past and present been asked to aid and assist Banks that have had some problems with HOAs. Further, it is at least possible that one or more of the broad general topics discussed today by one or more of the speakers may be matters that I am acting as a lawyer and / or consultant at the present time. If that happens, I hope you understand why I cannot discuss the topic or answer questions as part of my own professional obligations.

Nonetheless, I am not being paid by anyone to appear here today nor am I advocating any particular point of view and I am happy to pass along some ideas for the Committee's consideration for whatever that may be worth (if anything).

To further learn about the scope of today's hearing, I have met informally with at least one member of the Study Committee prior to today, and I have also had several prior conversations with one Senate Staff Member concerning this Committee and this hearing. Finally, a number of Individual Homeowners have contacted me by email with their own personal concerns on one or more topics.

Some Legal Resources:

1. Note, Judicial Review of Condominium Rulemaking, 94 Harv. L. Rev. 647 (1981) An early leading law review, that may be still relevant today, which urged at least in part, that Courts should use “reasonableness” standard of review for challenges to HOA actions.

2. Lee, In Search of the Middle Ground: Protecting the Existing Rights of Prior Purchasers in Common Interest Communities, 111 Penn. St. L. Rev. 759 (2007) An interesting law review article that recognizes that a new Board might, if totally unrestricted, pass amendments that substantially change the original Declaration and impose substantial new burdens on prior owners and suggested a number of ways that Courts and Legislatures might consider appropriate limits or even outright prohibitions in some situations of some amendments.

3. Restatement of Property (3d Ed. Chapter 6) (Common Interest Communities) (2000) There are many interesting sections of this new Restatement, including

6.13 Duties of Common Interest Community to Its Members

6.19 Developer’s Duty to Create an Association and Turn Over Control

6.20 Developer’s Duties to the Community

4. Two Interesting Prior South Carolina Cases⁴

Concerned Dunes West Residents, Inc. v. Georgia – Pacific Corp., 562 S.E.2d 633 (S.C. 2002) If the roads and other common elements transferred to the Property Owners Association on a certain date were defective at the time of transfer, what extent, if any, might the developer have liability to the POA?

Cullen v. McNeal and Wright’s Point Home Owners Association, 702 S.E.2d 378 (S.C. App. 2010) A case that addresses a number of different issues related to Successor Developers and the various duties, obligations, and rights that such persons may have.

⁴ Depending upon time constraints, we may or we may not have time to discuss the significance of these two cases.