

Homeowners associations tend to restrict resident rights

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by [Randy Bright](#)



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I read an interesting blog by Kaid Benfield entitled Coercion by Contract: How Homeowners Associations Stifle Expression, Sustainability in which he explained anecdotally how wrong homeowner's associations (HOAs) are. I have never liked the concept of HOAs, so I could, for the most part, agree with his points. (It's definitely worth the read.)

One of Benfield's neighbors was a Russian defector who when asked to be a part of their subdivision's HOA said, "Hey, I didn't leave one communist system just to join another."

He shared a story about an HOA that cited a homeowner for posting a political sign that was four inches too tall, leading to a lawsuit in which the homeowner prevailed and won a \$400,000 settlement that bankrupted the HOA.

Another homeowner was going to be fined for growing vegetables in her backyard, and in other situations there were punishable rules for drying clothes on a clothesline.

In my case, seven years ago we moved out of our home of twenty years in a subdivision to a rural area with no HOA, precisely because of similar problems.

The year before we moved, a builder constructed Victorian style homes in our neighborhood. Historically these were known as "painted ladies" and the builder painted them in historical colors. The primary color on one of them was pink, drawing the ire of the president of our HOA. When I learned that the HOA had filed a lawsuit against the builder to force him to change the color, I told the builder that pink wouldn't have been my choice, but that I didn't feel that anyone had the right to tell him what color he had to paint his homes. The suit was eventually dropped.

The thing to understand about HOAs is that most of them exist before the homeowners buy or build their homes, so when the purchase is made, homeowners are effectively agreeing to the rules and are legally bound to abide by them.

One of the rules in an HOA is that there is the ability to change the rules, so if homeowners don't participate in the regular HOA meetings, they may be bound to new rules that they otherwise would not have accepted. They may also be bound to the new rules simply because they were outvoted. It is likely that a very small percentage of homeowners in an HOA actually vote to change the rules. In my case, you could only vote by attending the HOA meetings, which most people did not.

The point of Benfield's blog was that when homeowners want to do sustainable things with their property, they are prohibited by HOAs that wield considerable power to punish, including fines and even the ability to foreclose. He pointed out that many of the rules had been written before sustainable practices came about, and that enforcement of unsustainable practices are not right.

For example, drying clothes on a clothesline became a symbol of poverty after electric dryers became widely used, but outdoor drying is now considered a desirable sustainable practice (even if your mother hangs your underwear out for all to see as my mom did in the old days).

I agree with Benfield that HOAs are a government that has far too much power over a person's property rights. But here is where I have difficulty with his line of thought.

What if homeowners moved into their neighborhood precisely because the existing rules are what they wanted, because those rules would protect their property values and preserve the way of life that they had invested in?

Some of my detractors believe that I have some irrational objection to government because I believe so much in freedom and property rights. I object to form-based codes and smart growth practices when they are forced onto existing property owners, but not when they are voluntary. So if a developer wants to create a Celebration, Seaside or The Villages (all in Florida), and like-minded people want to make their home in those places, why not? The market will make it a success or not. But what if people, who did not want to live by their rules, moved in and then tried to change the rules and force them on everyone else? If we used the same line of reasoning, wouldn't we say that was wrong?

I don't like HOAs any more than anyone else, and I believe that less government (in a balance between anarchy and tyranny) leads to more freedom and more choices in the way we choose to live, but if we simply substitute one set of rules for another, forcing them upon those who never agreed to them, we demonstrate a completely inconsistent and unfair line of thought.

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