

State Homeowners Association Czar? Bad Idea

Written by Tom Davis
Monday, 30 October 2017 14:07



Last May, as the 2017 legislative session in Columbia drew to a close, a bill that had been passed by the House, designated H. 3886 and titled the South Carolina Homeowners Association Act, was put on the Senate calendar for consideration.

After reviewing the bill and discussing it with several managers for community associations in my senate district, I exercised my right to block the bill, thus carrying it over until the 2018 session. Since the session will reconvene in January, I want to explain my objections, both to inform my constituents and to encourage the bill's proponents to accept my amendments.

The bill starts out innocently enough: it obligates a seller of property to give copies of association documents to a purchaser, requires an association to provide members with notice before increasing a financial obligation, and provides magistrate courts with jurisdiction to adjudicate civil disputes that pertain to associations. If the bill had stopped there I would not have blocked it.

The bill, however, goes much further: it creates a new state government agency called "the Office of the Homeowners Association Ombudsman" and provides this ombudsman with broad powers to supervise and regulate associations' affairs, including the right to "receive complaints from declarants, homeowners associations, executive boards of homeowners associations, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective homeowners association."

And that's not all: the bill also specifically directs the ombudsman to "employ and supervise staff necessary to assist in carrying out the powers and duties." In other words, to cut through the legislative rhetoric, the bill not only creates a new state agency to preside over and regulate the affairs of homeowners associations, it lays the groundwork for the new agency's

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subsequent expansion.

This is a terrible idea. A new state czar to oversee our state's homeowners associations? An expansion of state regulation into private affairs? What could have given rise to this? Upon inquiry I learned the bill had been drafted, sponsored and pushed by Myrtle Beach-area representatives in the House who said they were tired of getting phone calls from constituents complaining about arrogant homeowners associations that abused their authority.

I have been a real estate attorney practicing in Beaufort County for the past 32 years and I am very familiar with homeowners associations. Usually an association's documents are drafted by the lawyer for the community's developer, and when the developer leaves, the enforcement of those restrictions is left to a board of directors whose members are elected by the homeowners.

My experience has been that such volunteer boards of directors, when faced with tough choices, try to make decisions consistent with their fiduciary duties, in an attempt to protect the rights of all the owners in the community. But yes, I have also seen instances where an association's board has acted unreasonably and in a manner that was punitive and unfair to the homeowner. Such is the nature of any human association.

That is no justification, however, for the creation of a state-level Homeowners Association Ombudsman, and I do not believe a majority of those involved in homeowners associations want that sort of state involvement in their private affairs. Creating a new system that provides for the filing of complaints with a government agency in Columbia, with the attendant requirement of them traveling there to hash out their disputes, is not in their best interests. If any constituent reading this thinks otherwise, please contact me by email at the address below.

In the meantime, with the excellent assistance of other members of Beaufort County's legislative delegation, notably Reps. Weston Newton and Jeff Bradley, I am working with the bill's proponents to amend it so that the good portions are retained and the objectionable ones deleted — that is, to keep the new disclosure requirements and expanded jurisdiction of magistrate courts to resolve disputes, but to strike all of the ombudsman language.

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In fact, Reps. Newton and Bradley have already successfully put forward amendments to limit the powers given in the bill to the newly created state agency. I intend to continue those efforts in the Senate next January, but with the goal of completely removing the ombudsman from the bill, root and branch; an agency once created inevitably grows over time, and it's best to not even start down that road.

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