

**THE SECRET ASSAULT**  
**Beanie Adolph**  
**Texas Homeowners for HOA Reform, Inc.**

As Americans, we all assume that we have certain basic rights. In particular, most of us – especially most Texans – assume that we have fairly safe and secure rights in our homes. That assumption is not true. It has not been true for more than twenty years.

There is a secret assault on your rights as a homeowner. This assault has been waged  
In the courts,  
In every session of the Texas Legislature since the early 80's,  
And in secret meetings in our neighborhood HOAs.

This assault has been secret. It has been kept out of the papers. It has been steady, planned, and deliberate. This assault has created a billion-dollar industry that siphons money out of our neighborhoods and takes away people's homes.

Let me give you some idea of how secret this assault is.

How many of you know about Texas Property Code 204?

Texas Property Code 204 has been on the books since 1995. It allows HOAs to be forced on homeowners without their consent – even if they have lived in their homes for decades. It allows HOAs to pass rules that bind homeowners without their consent. It gives HOAs almost unlimited powers. Thousands of Americans have died to preserve our constitutional rights. The problem with Texas Property Code 204 is that it subjects homeowners to an all powerful government – the HOA – without any protection of constitutional rights. **204 grants total power to HOA boards.**

There was no public notice when 204 was passed.

**How many of you know about it? (204.010 – Powers?)**

- (20) "...exercise other powers that may be exercised in this state by a corporation of the same type as the Property Owners Association...
- (21) "...exercise other powers....
  - (b) "Powers enumerated in this section are in addition to any other powers granted..."

**How many of you know about TUPCA – the Texas Uniform Planned Community Act?**

TUPCA is a bill that the HOA forces have been trying to pass for the last few legislative sessions. You can bet that they will try again this next session. How do we know? **Because TUPCA is the state version of the master national plan UCIOA - the Uniform Common Interest Ownership Act.**

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Our organization, Texas Homeowners for HOA Reform, Inc., first learned about TUPCA in early 2006. We have been fighting it ever since. TUPCA is over 100 pages long. It is not recreational reading.

When we first learned of TUPCA, and before we read the entire bill, a number of us became alarmed by its proposals. For example, for centuries, American and English law has protected property owners from perpetual property restrictions. **One of the basic tenets of our law for centuries has been that no property should be burdened by restrictions forever.** The law limits the time for restrictions. This is so basic that it is in the Bill of Rights in the Texas Constitution. The HOA forces want to change that. This bill– TUPCA – would do away with this long cherished rule. The HOA forces have been trying for about four years – in the last two legislative sessions – to do away with this centuries’ old rule. How many of you knew that?

**TUPCA – Sec.83.004 (a). The rule against perpetuities does not apply to a declaration, to the interests created in a declaration, or to other governing documents.”**

How many of you know how many foreclosure actions have been filed by your own HOA against your neighbors?

How many of you know how much money HOA lawyers and management companies get from your HOA and your neighbors?

How many of you know how many violation letters are sent by your HOA each month?

**YOU DO NOT KNOW BECAUSE OF THE SECRET TACTICS OF THE HOA INDUSTRY.**

And how do they accomplish this in secret?

First, they have lots of money to use to protect their secrecy. The industry that controls HOAs is a multi billion dollar a year industry built on the backs of homeowners.

Second, they realize that they must act in secret. They do not want people to know all the rights that they have lost. They do not want people to know when their neighbors are losing their homes or are losing thousands of dollars or tens of thousands of dollars or even hundreds of thousands of dollars.

So...they preserve their secrecy by hiding the hundreds of violation letters that they send in an HOA claiming that they are **protecting the privacy of the homeowner.**

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**They preserve their secrecy** by refusing to allow homeowners to see the documents of the HOA. Homeowners are entitled by law to see these documents, but the HOA forces know that few people will pay the costs of a lawsuit to enforce that right.

**They preserve their secrecy** by writing bills that apply only to specific geographic areas. Such limited area bills – or bracketed bills – attract little attention from legislators outside the affected areas. Property Code 204 – the first statute mentioned – was a bracketed bill. It applies only to subdivisions in counties with specific populations. Of course there are no named counties. People might wake up and learn what is going on. Harris County and the surrounding areas were targeted. There were 23 bracketed bills from 1985 through 2001 – all pushed by the HOA Industry. “...Bracket bills avoid the scrutiny that statewide bills receive and are easily passed. Bracket bills can become the law of the entire state with a tiny amendment that comes in under the radar screen of lobbyists and of the public.” (*Statutory Evolution of Condominium and Property Owner Associations in Texas* – Reuler-Hailey – September 2002).

**They preserve their secrecy** by using lobbyists to work on our legislators outside of the public arena of committee hearings. These lobbyists are skilled at making things happen with little public notice.

For example, I mentioned earlier our fight against the TUPCA bill in the last few legislative sessions. It was not easy to even discover when TUPCA was up for consideration for hearing. The HOA forces and their lobbyists were always in-the-know, but the rest of the public was not. We – the members of THHR – testified in March 2006 against TUPCA at the Texas’ House hearing. We asked on multiple occasions that we get notice of the Senate hearing. We NEVER received that notice, but the HOA forces were notified. We discovered this only when one of our members called a senator. We were advised that the Senate hearing would be in three days. On such short notice, only six homeowners attended. The rest of the meeting room was filled by the HOA Industry. Obviously it was intended that **no** homeowners would be present. TUPCA was to cover the entire state of Texas –and yet **no homeowners were invited**.

**They preserve their secrecy** by drafting bills entitled “reform bills”. These reform bills always give the HOA forces **more** power, not less. An example of this is Property Code 209. This bill is called the Property Owners’ Protection Act, and under sec. 209.009 one reads:

“A property owners’ association may not foreclose a property owners’ association assessment lien if the debt securing the lien consists solely of:

- (1) Fines assessed by the association; or
- (2) Attorney’s fees incurred by the association.”

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**In utter contempt of Chapter 209, management companies immediately began filing “resolutions” titled “Priority of Payment” demanding that “All monies received from an owner may be applied first to non-assessment obligations of the Owner, such as fines, late charges, returned check charges, attorney fees, user fees, damages, etc. regardless of notations on checks and transmittal letters.” Thus the homeowner remains forever owing the assessments and in threat of foreclosure.**

**They preserve their secrecy** by telling homeowners and the press that abuses are rare. A website, [www.HOAdata.org](http://www.HOAdata.org), reveals the thousands upon thousands of foreclosure filings suffered by homeowners each year.

**They preserve their secrecy** by playing on fears – fears in particular of losing property value in your home. Property value is determined by the home itself, its location, and the economy. **Homeowners are now questioning the wisdom of placing their homes, their most valuable investment in the control of unknown HOA boards that have total power and no accountability.**

### **So what are the results of this secret assault?**

If you look at [www.HOAdata.org](http://www.HOAdata.org), the results are evident. HOA foreclosure filings have skyrocketed. No, there were not mass evictions of homeowners, although many poorer homeowners just walked away because of the mounting fees and legal costs. This multi-billion dollar industry thrives on the management fees and attorney fees. They do not want to evict you. They just want to take your money through management fees and attorneys’ fees. **Eviction gets them bad press.**

Management companies have “a myriad of specific purpose fees, such as resale certificate fees, document fees, collection fees, inspection fees, violation enforcement fees” **and now transfer fees...** Attorney fees can jump by the hundreds with no explanation. These **new transfer fees** appear at the very end of HB 2207 (80<sup>th</sup> Texas Legislative Session) – a bill that was to benefit homeowners but was **twisted** to allow “a fee” (amount not stated) that is payable to a POA, or an entity organized under Section 501© (3), or a governmental entity. Some POAs have been reaping huge incomes from these transfer fees.

### What do we need to do?

We are in a David vs. Goliath fight. The wealthy HOA Industry has billions of dollars and a powerful lobby. The people of Texas must unite. We will be the most powerful force. **We invite all Texas homeowners to unite with us to reclaim our rights.**

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Thousands of homeowners are suffering because of this injustice.

We truly believe that the reform movement is snowballing. A recent TV program in Dallas featured HOA injustice. They had nearly 1000 responses on the TV station's blog site – more than they have ever had for one of their stories. **95% of those 1000 responses were on the side of reform.**

**What protections do Texas homeowners need?**

**WE NEED Open Meetings and Open Records** – We need an end to the secrecy. There has been much fraud and embezzlement in the handling of HOA money and yet the industry opposes open records and open meetings.

**WE NEED protection of homeowners for their payments.** Abusive HOAs apply homeowner's payments first to attorneys' fees and other charges, so that the records show that the homeowner still owes dues or assessments. This practice allows HOAs to forever threaten a homeowner with foreclosure. We need homeowner payments to be applied to dues first – ahead of all other charges.

**WE NEED a repeal of the current law that allows HOAs to get attorney fee awards in lawsuits but does not allow homeowners the same rights.**

**WE NEED an end to the power of a few to impose an HOA on homeowners who have lived in their homes for years with no HOA.**

**WE NEED an end to HOA right to fine.**

**WE NEED an end to HOA foreclosure.**

**WE NEED fair elections with every owner having the right to vote. No homeowner will be denied the right to vote for any reason. Elections must be managed by a non-interested entity.**

**We need the right to free speech – NO SLAPP SUITS**

**WE NEED a guarantee that all homeowners should have all the freedoms guaranteed by the United States and Texas Constitutions.**

Please join us in our struggle to reclaim our rights.  
<http://www.texasshoreform.org/>