

**Beanie Adolph's Testimony**  
**March 21, 2006**  
**Texas House of Representatives Joint Hearing**  
**Interim Charge – TUPCA**

Testimony by Beanie Adolph given at the Texas House of Representatives joint hearing on March 21, 2006 regarding the Interim Charge on the subject of the "*...powers and practices of homeowner association in Texas and the possible need for legislation, such as the proposed Texas Uniform Planned Community Act, to address the rules, enforcement, restrictions, and other matters within the authority of a homeowner association.*"

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I am Beanie Adolph. I am here to speak against TUPCA. I am here to speak for the rights of homeowners. For 23 years the Texas Legislature has done the bidding of the management companies and lawyers who prey on homeowners. For 23 years the Texas Legislature has given more and more power to Homeowner Associations, management companies, and lawyers.

It amazes me that they are never satisfied with the power that they have taken from homeowners. They are here again seeking yet more power, seeking yet again to take away the rights of Texas homeowners.

The main power behind all of this has been the Community Associations Institute. Their lobbyists and representatives are here today. The Texas Uniform Planned Community Act appears to be Act IV of the CAI's attack on the homeowners of Texas. Most of you have not been in the Legislature for 23 years, so I want you to understand the context of this latest effort.

Act I was in 1983, when the CAI got the Texas Legislature to give HOAs the right to attorney' fees in any dispute with a homeowner through Property Code Section 5.006. This most important step forever tilted the balance in favor of the HOA and against the homeowner. This one change allows HOAs to use what I consider to be blackmail against Texas homeowners. Since 1983, an HOA has the upper hand in any dispute with a homeowner because every step of the way, the HOA increases the ultimate cost to the homeowner by adding hundreds of dollars for attorneys' fees, for phone calls and letters, and for any other attention to the dispute.

Act II was in 1987, the Inwood v. Harris case, when CAI attorneys got the Texas Supreme Court to declare that homeowners would no longer have the Constitutional homestead protection against HOA foreclosures.

Real people, Charlie Harris, Jr. and Rolando M. Pamilar, lost their homes to foreclosure. The three justices who prevailed in this decision admitted, "We recognize the harshness of the remedy of a foreclosure, particularly when such a small sum is compared with the immeasurable value of a homestead."

You need to understand that the homeowners did not even have an attorney before the Supreme Court in Inwood. The homeowners of Texas lost their Constitutional homestead protection without anyone speaking on their behalf. Justices Mauzy and

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Gonzalez declared it "unfortunate that this (Supreme) court has no procedures to permit or require the strenuous advocacy necessary to protect the constitutional protection heretofore provided to homesteads..." Justice Mauzy continued, "If our constitutional rights and liberties are to be taken from us one at a time, let us at least have the common courtesy to give those heretofore precious and cherished rights and liberties a respectful hearing before they are snatched from us and succeeding generations, as yet unborn, who have no voice and no advocate."

After Act II, HOA foreclosures steadily increased in the Houston area. A website that my family and I maintain, [www.hoadata.org](http://www.hoadata.org) shows the huge increase in HOA foreclosures in Harris County after Inwood. We now have thousands of HOA foreclosures every year in Harris County over trivial amounts of money.

Act III was in 1995 when the CAI again got the Texas Legislature to take away homeowner rights by passing Texas Property Code 204. Again, Texas homeowners lost significant rights without any real consideration. Chapter 204 was passed at the 11<sup>th</sup> hour on a voice vote with no public notice, no public debate. Property Code 204 was written by a CAI attorney. The devastating effects of Property Code 204 are evident throughout Texas.

We are now here for Act IV. I know the CAI holds all the cards. I know they have the money and the power. The homeowners of Texas are not organized to protect their rights. They have no lobbyists to visit you. But I and others are here because we continue to hope that one day the Texas Legislature will see how badly past Legislatures have treated Texas homeowners. I hope that you are that Legislature.

Please, please, please think about what the CAI has done to Texas homeowners over the last 23 years.

Think about Wenonah Blevins. Wenonah Blevins, an 82 year-old widow was forcibly evicted from her \$150,000 home over \$800 in dues.

Think about Bruce Kyckelhahn who faced foreclosure over a gaslight placement. The HOA thought Mr. Kyckelhahn needed to move his gaslight 3 feet.....3 feet! I remember well when Bruce and his wife, Shirley, came to see me, she in grave fear of losing her home. At that time damages sought by the association could have been as high as \$200 for each day the light was not moved, plus attorneys' fees. Bruce estimated the total amount of the dispute was topping \$140,000 by the time the two sides met to try to settle through mediation. Bruce compiled a list of gaslights in his subdivision not placed in accordance with the Board's dictates and they numbered 58 out of 114 homes - over 50%. As always, the response is standard, "we're not dealing with other homeowners; we're just dealing with you." ABC's 20/20 brought national attention to the excessive power granted HOAs.

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Think about Middle School teacher, Jana Harugthy, the mother of two boys, who called to say she was told she could not sell her home until she paid Association attorney William Gammon \$4,100. She actually owed less than \$300 in assessments. The bill included a couple of Deed Restriction letters, but legal fees of over \$3400 were the bulk of the demand. She had to pay attorney Gammon the full amount in order to sell her home. The all powerful, unchecked HOA claimed another victim.

Our website [www.HOADATA.org](http://www.HOADATA.org) lists thousands of HOA foreclosure filings that resulted from the passage of Property Code 204. Each legislative session since 2001 we have brought cases to you revealing the results of the extraordinary powers you have granted HOA boards. What you have done is establish private neighborhood entities that replace existing local governments. In effect you have overthrown the system of constitutional government established by our founding fathers. You have created despotic governments with no checks and balances.

In 2000 Richard Spears, a CAI Trustee, wrote about a protesting homeowner, "...He's ignoring the genesis of a mandatory HOA and his membership in it in which he voluntarily surrendered his "civil rights". It is the CAI that prefers a system where rules are placed above the rights and freedoms guaranteed to all Americans. Because of Property Code 204, HOAs operate freely as bona-fide principalities without accountability to anyone. The Constitution apparently has no meaning, no value to the CAI.

In a recent case decided by the Superior Court of New Jersey, The Twin Rivers Homeowner Association argued that, "...subjecting homeowners associations to constitutional standards would result in substantial negative consequences...." I'll repeat, "...subjecting homeowners associations to constitutional standards would result in substantial negative consequences..." Can you believe this? They dare to claim that our treasured constitutional rights would result in substantial negative consequences. Thousands of Americans have died to preserve our constitutional rights and this is the problem with Property Code 204. Homeowners living in HOAs are denied the rights of those who do not live in HOAs. They are denied equal protection as guaranteed under the 14<sup>th</sup> Amendment.

HOAs are described as "mini democracies". Nothing could be farther from the truth. As soon as the HOA is formed, the Board is told how difficult the work is and that a management company is needed. In almost all cases that is the end of democracy. The management company steps in and all control shifts from the board to the management company. When one homeowner complained to his HOA board that the management company acted like a god, the response was, "as far as you are concerned it is god." Homeowners tell of hopelessness because the laws protect the boards and no one will help them. Illegal voting, unethical activities, secrecy, no open books, arrogance, harassment and unreasonableness are just some of the complaints.

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Is it proper for the state to create a form of local government that is not compatible with our American system of democracy?

Is it proper for the state to permit the existence of private quasi-governments that regulate and CONTROL the behavior of citizens without the same due process and equal protection clauses of the 14<sup>th</sup> Amendment?

When did "whatever the people privately contract" prevail over the protections of the U.S. Constitution?

And so we come to Act IV. The CAI is proposing its latest statute. This statute is so opposed to the freedom that is believed basic to our country that it defies reason that you are even considering it. The answer must be NO! A loud NO!. Freedom must be restored. Homestead protection must be restored.

I believe you take an oath to uphold the U.S. Constitution. Please be true to your country, to your state, and to your constituents and DENY this TUPCA proposal - and then AMEND THE PROPERTY CODE SO THAT HOA FORECLOSURE IS NO LONGER A THREAT TO HOMEOWNERS.