

Mesa anti-HOA group wins another appeal

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An Appeals Court panel has ruled for the second time in a year that an east Mesa retirement community cannot enforce new deed restrictions against residents.

The decision reaffirms the success of Dreamland Villa residents in their multi-year battle against the imposition of a homeowners association against their will.

Nearly eight years ago, the Dreamland Villa Community Club recorded new deed restrictions requiring all homeowners to pay annual assessments and special assessments for recreation, health, safety and maintenance.

Several years after that, the club began placing liens on the properties of people who refused to pay and then filed lawsuits to collect.

Last year, a three-judge panel of the state Court of Appeals unanimously ruled that the original property declarations did not permit residents to be forced into club membership.

The panel also declared that the board could not assess fees and place property liens on homeowners who refused to pay "for an association they did not seek."

Steve Cheifetz, attorney for the HOA opponents, said the ruling provides important safeguards for homeowners of existing communities where residents may try to impose an HOA.

The appellate court ruling culminated a bitter lawsuit that raged for seven years, but the community club acted as if the edict applied only to the dozens of residents who filed the appeal, Cheifetz said.

The case went back to the appeals panel, which ruled that the deed restrictions cannot be enforced on any of the community's homeowners.

"The Appeals Court (in its first ruling) had declared that the CC&Rs (covenants, conditions and restrictions) are not valid and are unenforceable," Cheifetz said. "But the community club insisted on trying to collect money, and older folks were intimidated with threats. It should have been obvious in the first ruling that the decision applied to everybody."

The attorney said some homeowners will seek restitution of assessments and fines they paid. The original ruling ordered the HOA group to pay attorneys fees. The anti-HOA group will have the option to petition for a similar award for the second appeal.

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