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# Band of citizens call into question HOA management group banking practices

By [Terrance Thornton](#) Nov 3rd, 2016

## A LOOK INSIDE: the homeowners association



A group of Scottsdale residents are spearheading an effort to evoke legislative change meant to corral the powers of management companies hired by local homeowners associations statewide.

A group of Arizona citizens are gathering at the capitol every month trying to force a conversation on the legal powers and lack of oversight and regulation of HOA management groups throughout the Phoenix metropolitan area.

And, they have a sympathetic ear at the Arizona Legislature.



David Farnsworth

Arizona Sen. David Farnsworth (R) on the third Monday of every month hosts what he has coined, a “mastermind group” allowing everyday residents, community advocates and legal professionals to look at how certain powers granted to HOAs by the Arizona Legislature can be reined in.

“The goal of the mastermind group is to suggest improvements to the homeowner association statutes and encourage involvement in getting the changes passed through the Legislature,” Sen. Farnsworth said in a Nov. 1 statement.

Sen. Farnsworth says his office is pursuing the possibility of introducing new bills focused on some of the financial powers installed through legislation HOAs now possess.

“We have opened 10 different folders, which may or may not be introduced,” he pointed out. “One has to do with not allowing homeowner associations to turn off a family’s water for nonpayment of homeowner association assessments.”

But while other accusations have been raised, Sen. Farnsworth contends proof is harder found than claims made.

“I have been receiving emails from a constituent concerning the possibility that financial fraud may be occurring,” he said of certain banking practices allegedly enjoyed by HOA management groups.

“This certainly has gotten my attention and we are watching the development of this situation closely. I have been convinced that the potential for financial fraud exists. If any of your readers have evidence, I would encourage them to contact the appropriate enforcement agencies and would appreciate a copy being sent to my office.”

Sen. Farnsworth says he is dedicated to giving more powers to local homeowners.

“I am convinced that there is corruption within our society,” he said. “And would very much like to do my part as a state senator to root it out! However, of course, it is very challenging to discover and prove corruption.”

The citizen group now has a working document members have agreed as a starting point to begin to address myriad issues they say exist. These issues are:

- Real estate disclosures

- Financial aspects
- Municipal risk
- The abuse of people
- Dispute resolution
- First Amendment issues
- Accounting practices
- Information technology

While residents remain steadfast to assertion things need to change, a founding member of HOA advocacy unexpectedly lost her life recently.

Jill Schweitzer, who has penned a book on HOA issues and produced videos on local issues impacting homeowners that can be viewed at [www.hoasavers.com](http://www.hoasavers.com), passed away tragically due to complications stemming from an asthma attack that occurred Sunday, Oct. 25. She was 51 years old.

“We have had great participation and good results so far,” said Sen. Farnsworth. “However, we are all sorrowful because of the tragic death of one of our most passionate and hardest working members Jill Schweitzer.”



The late Jill Schweitzer Thursday, Aug. 4 in south Scottsdale where she tirelessly fought for homeowners' rights. (Independent Newsmedia/Terrance Thornton)

### **Point of entry**

Scottsdale resident John Sellers, a longtime international financier, contends basic money laundering controls are not being followed by HOA management companies.

He contends following the adoption of the Patriot Act banks are now required to intimately understand where deposits are coming from and specifically who is making them.

Mr. Sellers says when HOA members pay their dues, those dues are typically lumped together and deposited into the bank of the management company's choosing, which is typically unknown to members of the governing body.

On most transactions, records show, the executive director of an HOA management company is making deposits on behalf of the constituency.

The citizen group would like to see two new provisions emboldened in state law, which are:

- A new statute to establish comprehensive but basic rules for the control and use of association funds, define a process for the development of a plan for the use of reserve funds for long term maintenance and upgrades to common areas, and to define the fiduciary responsibility of association boards.
- A new statute to define the code of conduct and indemnification for association board directors, to establish limits on what boards can establish as rules for the association beyond specific authority of the declaration, and to prevent indemnification of community managers for violating any laws and mismanagement of community finances.

“We are trying to layout all of the issues,” Mr. Sellers said Oct. 31 at the *Scottsdale Independent* newspaper office.

“You are supposed to know who your clients are. It is the point of entry where you can protect against money laundering. These are basic customer identification procedures.”

Mr. Sellers contends this lack of oversight gives undue sway to HOA management groups with local banking institutions.

“The average HOA board member has no idea who they bank with. That’s a problem,” he said. “They (HOA management groups) often have a master agreement typically done with the developer of the community that empowers the HOA management group. When you buy into an HOA you are agreeing to those terms.”

Mr. Sellers says basic banking controls are not being observed.

“The banks have no idea who their clients are,” he said. “The people who are behind this, absolutely know this. They have built a system that does not allow for transparency.”

### **The power of influence**

HOA advocates agree they are fighting an uphill battle lined with exclusive event access, gourmet brunches and special favors.

“Typically the hired management companies have relationships with banks,” said HOA Attorney Steve Cheifetz in a Nov. 1 phone interview. “And, all of the funds are kept by the bank chosen by the management company. There is a big benefit to the bank as the money deposits are done regularly. One management company could have hundreds or more customers and all of their funds put into one bank.”



Steve Cheifetz

Mr. Cheifetz was reticent to say any wrong doing was occurring, but did point to powerful lobbying efforts on the behalf of HOA management groups that set a stiff roadblock to any kind of legislative reform.

“Just passing the law doesn’t fix anything — there is no enforcement,” he said. “It is a quandary and there is no solution. There are some good laws on the books but no one enforces them. The problem is these groups are quasi-governments and our government is filled with checks and balances. A government without checks and balances runs a muck.”

One of the most powerful lobbying groups, residents say, is the Community Association Institute, which employs the Phoenix-based DeMenna and Associates lobbying outfit.

“We are the leading organization, in essence who lobby for the best interests of the homeowner,” said Kayte Comes, executive director of the Central Arizona Chapter of the Community Associations Institute in a Nov. 1 phone interview.

“We are not a roadblock for the industry. We are the leading entity to decide what is best for HOAs, the homeowners. We were created to be an advocate for what is in the best interests of local homeowners.”

Kevin DeMenna of DeMenna and Associates echoes the same sentiment.



Kevin DeMenna

“Realistically, the path to success on HOAs is through the middle,” he said in a Nov. 1 phone interview. “We take our direction of specific issues but we have never been invited to the masterminds group.”

Mr. DeMenna says the citizen group is known well for its strong opinions and lack of consensus.

“Being around as long as I have you notice certain patterns over time,” he said noting his 37 years of lobbying experience. “The session will begin with a group that is notorious for their strong opinions.”

Financial concerns raised by Mr. Sellers specifically speaks to his effort to gain income, Mr. DeMenna says.

“Is Mr. Sellers making money? And is he trying to make money in Willow Creek,” he pointed out of efforts Mr. Sellers is making regarding an HOA in the Willow Creek community.

“You have a couple of Realtors. How do each of us pay our bills? The masterminds appear to be a band of rebels who have been wronged by the HOAs. For each of us, it is important to know how we pay our bills.”

In regard to accusations about questionable banking practices, Mr. DeMenna responded, “I think Mr. Sellers is being creative.”

“I am on the board, as a resident, I am not concerned with the management company and where they bank,” he said. “The management company is the consigliere — I expect my management company to take care of it.”

Mr. DeMenna says banking issues have never been raised before.

“There may be merit here, but where an HOA banks has not risen to the level of policy attention before,” he said. “I suspect there is a reason for that.”

### **A perspective of preservation**

Scottsdale resident Dennis Legere, who has drafted the majority of proposed legislative changes, says he is trying to help root out the bad actors as many good HOAs exist.

“I’ve drafted most of our proposed legislative changes from a perspective of preserving and respecting those associations that are truly working hard for their communities and not over burdening them with regulation that is cumbersome and makes their work harder,” he said in a Nov. 1 statement.

“(We are) attempting to put an end to the abuses of some organizations defying the laws and the basic rights and respect of the homeowners that they serve.”

Mr. Legere points out the proposed changes are extensive, but thoughtful.

“We have a total of 19 different proposals that range from simple clarification of existing statutes to totally new statutes to address areas that have never been addressed before,” he explained. “We have attempted to do all of this without proposing any new bureaucracy or oversight agency to do our work for us. Whether we like it or not the entire enforcement of all existing laws relative to HOAs is left to the homeowner.”

Better homeowner protections needs to be established and observed, Mr. Legere says.

“The entire HOA industry including boards, management companies and attorneys have absolutely no incentive to comply with a strict interpretation of the law unless that interpretation benefits them,” he said. “They are all indemnified from liability and have the unlimited resources of the homeowners money to back their positions, any cost of litigation is simply passed on to the association members, and the members are required to pay that cost.”

Mr. Legere explains the deck is stacked against a homeowner who disagrees with an HOA management company.

“All the homeowners have are their own resources and the law,” he said.

“Most of our efforts are in clarifying the law to eliminate the unintended interpretations and abuses and provide us with clear statutes that for now at least we can defend. Maybe someday a mechanism will be in place to enforce the laws of this state relative to homeowner that does not require the homeowner to risk their money to do so. Until that day we fight on with any tool that we can.”