



Arizona Homeowners Legal Information Service

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updated March 11, 2007

Table of HOA Cases; Restatement (Servitudes)

Note: The following information is not exhaustive nor do the cases represent the final word on the issue in question. These cases are provided as introductory research material.

A. CASES

(a) FEDERAL

1. *American Manufacturers v. Sullivan* 526 US 40 (1999) (state action; following statute)
2. *EVERY v. MIDLAND COUNTY*, 390 U.S. 474 (1968) (14th amendment & local government)
3. *Bailey v. Alabama* 219 US 219 (1911) (legislative action)
4. *Board of Regents v. Roth* 408 US 564 (1972) (fundamental rights)
5. ***Bonner v Lewis***, CA(Ariz) 1988 857 F2d 556 on remand 714Supp 420 (federal 9th district court of appeals) "pro se complaints are to be held to a less strict standard than those directed by a lawyer".
6. *Boos v. Barry* 485 US 312 (1988) (political signs)
7. ***Brentwood Academy v. Tennessee Athletic School*** 531 US 288 (2001) (tests for state action)
8. *Burton v. Wilmington* 365 US 715 (1961) (symbiotic relationship; state action)
9. *Carey v. Brown* 447 US 455 (1980) (equal protection)
10. ***Caron v. Maxwell***, 48 F. Supp. 2d, (D. Ariz. 1999) (FDCPA case against lawyers)
11. *City of Ladue v. Gilleo* 512 US 43 (1994) (political signs ordinance)
12. *Clark v. Arizona Interscholastic Assn.*, 695 F. 2d 1126 (CA9 1982), cert. denied, 464 U. S. 818 (1983) (athletic assn as state actor)
13. *Cleburne v. Cleburne Living Center* 473 US 432 (1984) (requirement to show reasons for restricting liberties)
14. *Commonwealth of Virginia v. Rives* 100 US 313 (1879)
15. *Con Edison v. Public Service* 447 US 530 (1986) (political speech; state action)
16. *Dolan v. City of Tigard* 512 US 374 (1994) (eminent domain taking)
17. *El Fundi v. Deroche* 625 F 2d 195 (state action via security guards)
18. *Evans v. Newton* 382 US 296 (1966) (symbiotic relationship; state action)
19. *Federal Communications Commission v. Beach Communications* 508 US 307 (1993) (rational basis of scrutiny)
20. *Flagg Bro v. Brooks* 436 US 149 (1978) (no state action in warehouse sale; rules for state action; zoning)
21. *Gerber v. Long Boat Harbour* 757 F Supp. 1339 (1991) (court enforcement of private agreements in condo declarations is a state action)
22. *Girard v. 94th St.* 530 F 2d 66 (tiered state action for covenants)

23. *City of Ladue v. Gilleo*, 114 S. Ct. 2038 (1994) (sign restrictions)
24. *Goldberg v. 400 East Ohio* 12 F Supp. 2d 820 (color of law; distributing materials)
25. *Griffin v. Maryland* 378 US 130 (1964) (private use of police can be a state action)
26. ***Griswold v. Connecticut*** 381 US 479 (1965) (9th amend; privacy)
27. *Hadley v. Junior College Dist* 397 US 50 (1970) one-vote rule to special gov't agencies)
28. *Holden v Hardy* 169 US 392 (1898) (property rights subject to public good)
29. *Hudgens v. NLRB* 424 US 507 (1976) (functions of a municipality)
30. *Jackson v. Metropolitan* 419 US 345 (1974) (state action; exclusive gov't function)
31. *Kalian v. Saw Creek Estates*, 275 F Supp. 2d 578 (no basis of state action; color of law ; developer)
32. *Kelo v. City of New London*, 545 US 469 (2007) (eminent domain; public purpose).
33. *Lochner v. New York* 198 US 45 (1905) (**police power & general welfare; right to contract is fundamental**)
34. *Loren v. Sasser* 309 F 3d 1296 (constitutional protections beyond what is appropriate)
35. ***Lugar v. Edmondson Oil*** 457 US 922 (1982) (courts to restrict their interference with private interests)
36. ***Marsh V. Alabama***, 326 US 501 (1946) (company town and public functions)
37. *Meyer v. Nebraska* 262 US 390 (1923) (legislative actions)
38. *Misco* 484 US 42 (court to protect public good)
39. *National Cable v US*, 415 US 336 (SC doesn't question agency on non-delegation of authority)
40. ***New York Times v. Sullivan*** 376 US 254 (1964) (political speech)
41. *O'Gorman v. Hartford Fire* 282 US 251 (1931) (police powers & commission limits)
42. *Pa. Coal Co.,v. Mahon*, 260 U.S. 393 (1922) (property taking; regulations).
43. *Pierce v. Society of Sisters* 268 US 510 (1925) (legislative action)
44. ***Planned Parenthood v. Casey*** 505 US 833 (1992) (**Footnote Four Plus**)
45. *Quail Creek v. Hunter* 538 So 2d 1288; 724 F Supp. 884 (disagreed with Gerber, #33)
46. *Railroad Retirement Board v. Alton* R 295 US 330 (1935) (legislation)
47. ***Shelly v. Kraemer*** 334 US 1 (prohibitive state actions by use of judicial enforcement as state was fully aware of the illegal use of the courts; judicial enforcement harms constitutional rights)
48. ***Slaughter House Cases*** 83 US 36 (1873) (privileges or immunities clause; 14th Amendment and procedural due process)
49. ***State Farm v. Campbell***, 538 U.S. 408 (2003) (excessive punitive damages violate 14th Amendment)
50. ***US v. Carolene*** 304 Us 144 (1938) (**Footnote Four**)
51. *US v. Darby* 312 US 100 (1941) (commerce clause)
52. *Village of Euclid v. Amber Realty* 272 US 365 (1926) (unreasonable zoning is unconstitutional)
53. *Virginia v. Rives*, 100 U.S. 313 (1879)
54. *Williamson v. Lee Optical*, 348 US 483, (1954) (rational basis for scrutiny)

(b) STATE

Arizona

54. *Ahwatukee Custome Estates v. Bach* 2 P 3d 1276 (1993) (AZ. bylaws a binding contract)
55. ***Arizona Biltmore Estates v. Tezak*** 868 P 2d 1030 (1993) (covenants strictly construed against enforcers ; intent of parties)
56. ***Cactus Wren Partners v. Arizona Dept. of Building & Fire Safety***, 177 Ariz. 559, 869 P.2d 1212 (App. Div. 1 1993) (OAH judge allowed to order HOA restitution).
57. ***Cain v. Horne***, CA-CV 2007-0143 (Ariz. App. Div. 2 2007) (constitutional legislation; school vouchers).
58. *Canady v. Prescott Canyon Estates Homeowners Association*, 60 P.3d 231 (Az. App. 2002) (fair housing and disability).
59. *Cimarron Foothills Cmty. Ass'n v. Kippen*, 2 CA-CV 2003-0048 , COURT OF APPEALS OF ARIZONA, DIVISION TWO, DEPARTMENT A , 2003 (goup homes and enforcement of covenants).
60. *Copper State Bank v. Saggio*, 679 P.2d 84(Ariz. App. 1984). (Pro Se held to know civil rules).
61. ***Divizio v. Kewin Enterprises***, 666 P.2d 1085 (Ariz. App. Div. 2 1983)(fiduciary duty; interpretation of covenants; CC&Rs as contract).
62. ***Duffy v. Sunburst Farms***, 604 P.2d 1124 (1979) (AZ. Covenants taken at everyday meaning)
63. *Facilitec, Inc v. Hibbs*, 80 P.3d 765 (Ariz. 2003) (agency powers and statutes).
64. *Fickett v. Superior Ct.*, 558 P.2d 988, (Ariz. App. Div. 2 1976) (derivative fiduciary suit against attorney).
65. *Fiduciary Servs. v. Shano*, 869 P.2d 1203 (Ariz. 1993) (derivative fiduciary suit against attorney).
66. *Gfeller v. Scottsdale Vista N. Townhomes Assn.*, 1 CA-CV 98-0010 (Ariz. App. 1998) (affirmative duty on board to enforce covenants).
67. ***Johnson v. The Pointe Community Assn., Inc.***, CA-CV 02-0160 (Ariz. App. Div. 1 2003) (court does not give deference to HOA board)
68. *J. W. Hancock Entr., Inc. v. Ariz. State Registrar of Contractors*, 690 P.2d 119 (Ariz. App. Div. 1 1984). (blending of powers; agency powers).
69. *Kelly v. Nationsbanc Mortgage Corp.*, 17 P.3d 790 (Ariz. App. 2001). (Pro Se held to same standard as attorney).
70. *La Esperanza Town Home Association, Inc. v. Title Security Agency of Arizona*, 689 P.2d 178 (Ariz. App. 1984) (covenants must apply equally to all members).
71. ***Powell et al v. Washburn et al***, Ariz. CV05-0186 PR (2006) of CA-CV04-0370 (App. Div. 1 2005) (covenants upheld on basis of intent; Restatement prevails)
72. ***Riley v. Stoves***, 526 P.2d 747 (Ariz. App. Div. 2 1974)(covenants; equal protection; reasonableness; state action).
73. ***Town of Gilbert v. Maricopa County***, CA-CV 06-0309 (Ariz. App. Div. 1 2007) (constitutionality of statute).
74. *Safeway Ins. Co., Inc. v. Guerrero*, 1 CA-CV 02-0661 (attorney contract interference).
75. *Shalimar Ass'n v. D,O,C, Enterprises* 688 P 2d. 682 (AZ App 1984) (appearance as notice of restriction)
76. ***Shamrock v. Wagon Wheel Park Homeowners Association***, No. 1 CA-CV 02-0403 (Ariz.App.Div.1 08/26/2003) (imposing mandatory HOA on existing subdivision)
77. ***State v. Ramos***, 648 P.2d 119 (Ariz. 1982) (statute presumed constitutional).
78. ***Vales v. Kings Hill***, CA-CV 04-0816 (Ariz. App. Div. 1 2006) (validity of amendments).
79. ***Westwood Homeowners v. Tenhoff*** 745 P 2d. 976 (Ariz. App. Div. 1 1987) (covenants against public policy; group homes)

80. *Wilson v. Playa de Serrano*, CA-CV 2005-0072 (Ariz. App. Div. 2 2005) (restricting fundamental property rights requires specific notice of possible restrictions).

California

81. *Chantiles v. Lake Forrest* 37 Cal App 4th 914 (state laws protecting rights of homeowners)
82. ***Cohen v. Kite Hill*** 142 Cal App 3d 642 (1983) (arbitrary decisions; state protections; fiduciary duties & good faith; developer)
83. *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468; (2000) (quasi-government; meetings are public forum)
84. *JAMES F. O'TOOLE COMPANY, INC., v. LOS ANGELES KINGSBURY COURT OWNERS ASSN.*, 126 Cal. App. 4th 549; 23 Cal. Rptr. 3d 894 (SECOND APPELLATE DISTRICT 2005). (HOA refused to pay judgment to non-homeowner).
85. *Laguna Publishing Co. v. Golden Rain Found. of Laguna Hills*, 131 Cal. App. 3d 182 (1982) (is Leisure World condo a mini-government)
86. *Laguna Royale Owners' Assn. V. Darger*, 174 Cal. Rptr. 136 (1981) (reasonableness of board action).
87. ***Landen v. La Jolla Shores Clubdominium Homeowners Assn.*** 980 P.2d 940 (Cal. 4th 1999) (court deference to board judgment)
88. ***OSCA Development v. Blehm***, E032843, Cal. App 4th, DIV 2 (2003) (**Desert Crest case**; validity of CC&R amendments with non-unanimous approval; not for publication)
89. *Pardee Construction v. Rodriguez* Cal App 4th D039273 (2002? 2003?) (adhesion contracts)
90. ***Nahrstedt v. Lakeside Village Condominium Association*** 878 P.2d 1275 (1994) 8 Cal.4th 361 (covenants & public policy; arbitrary; reasonable)
91. *Rancho Santa Fe v. Dolan-King* (2004) D040637/D041486 Cal App (**restrictions for good of community**)
92. *Sokolow v. County of San Mateo* 213 Cal App 3d 231 (significant state involvement for state action)
93. *Surfside 84 v. Mullen* Ct. of Special Appeals of Maryland, No. 495 (September 1984) (state action; procedural due process; lack of notice; CAI Reporter)
94. ***Villa de Las Palmas v. Terifaj*** CA SC S109123 (2004) (**amended restrictions are binding on all**)
95. *Villa Milano v. Il Davorge* 84 Cal App 819 (2000) (**CC&Rs are contracts; adhesion contracts**)

(c) OTHER STATES

96. *Agnelli v. Arrowhead* 689 A.2d 357 (1997) (color of law; enforcing deed restrictions)
97. ***Armstrong v. Ledges Homeowners Ass'n, Inc.***, 633 S.E.2d 78 (N.C. 2006) (affirmative covenants; reasonable amendments; too broad a purpose not reasonable).
98. *Ashcreek v. Smith* 902 SW 2d 586 (1995) (failure to provide notice of violations)
99. *Beachwood Villas Condo v. Poor*, 448 So.2d 1143 (Fla. Dist. App. 1984) (board authority to act)
100. *Blackburn v. Habitat Development* 57 SW 3rd 378, (quasi govt)
101. *Brock v. Watergate* 502 So. 2d 1380 (CAI Reporter; HOA not a government; 42 USCA 1983)
102. *Brooks v. Northglen* 76 S.W. 3rd 162 (statutes & contract interference)

103. *Bryan v. MBC Partners* 541 SE 2d 124 (2000) (HO may waive constitutional rights; signs)
104. *Cashio v. Shoriak* 481 S 2d 1013 (LA 1986) (restrictions on signs)
105. *Chalkey v. Roush* 757 A 2 972 (condo not muni govt)
106. *Chesus v. Watts* 967 SW 2d 97 (quasi govt)
107. *Committee for a Better Twin Rivers v. Twin Rivers*, 929 A.2d 1060 (2007).
108. *Covered Bridge Condo Assn. V. Chambliss*, 705 S.W.2d 211 (Tex. App. 14th Dist. 1985) (reasonable covenants are not unconstitutional; age restrictions).
109. *Everygreen Highlands Association v. West*, 73 P.3d 1 (Colo. 2003) (**amendment to require mandatory HOA**).
110. *Finley v. Glenn* 154 A 299 (PA1931) (constructive notice of covenant)
111. *Foley v. Osborne Court* 724 A.2d 436 (a remand to consider statute an unconstitutional delegation of governmental powers; fines)
112. *Frank v. Spadafora* 447 NE 2d 1250 (what theory to apply –constitutionalism)
113. *Glorieux v. Lighthipe* 96 A 94 (NJ 1915)
114. ***Golden Sands v. Waller***, 545 A 2d 1332 (Md.1988) (question of due process notice & 14th Amendment)
115. *Hidden Harbour Estates v. Norman* 309 S 2d 180 (1975)
116. *Indian Lake v. Director of Revenue*, 813 SW 2d 305 (not civic organization)
117. ***Inwood v. Harris*** 736 S.W.2d 632 (Tex. 1987) (homestead; covenants running with the land)
118. ***James Foley v. Osborne*** C.A. No. 96-360, KENT 2000 R.I. Super. LEXIS 19 (remanded case found Act unconstitutional)
119. *Lake James Community v. Burke County, NC*, CA-96-177-4-T (4th Cir. 1998) (waiver of rights, arbitration)
120. *Lee v. Katz* 00-35755 2002 DJDAR 373 (state actions and governmental powers)
121. *Lovering v. Seabrook Island POA*, 291 S.C. 201 (1986) (implied authority & ultra vires)
122. *Lycoming County v. Com. Dept of Labor* 267 A 2d 238 (public funds create public body)
123. *Maatta et al v. Dead River MI App No. 248848* (2004) (amending CC&Rs without unanimous consent)
124. *Majestic View Condo v. Bolotin*, 429 So.2d 438 (Fla. App. 4th Dist. 1983) (pet restrictions and due process notice).
125. ***Midlake v. Cappuccio*** 673 A 2d 340 (1995) (condo not muni govt)
126. *Murphy v. City of Seattle*, 647 P. 2d 540 (1983) (cessation of servitudes by purchase)
127. *Neponsit Property Owners' Assn. v. Emigrant Industrial* 15 N.E.2d 793 (1938) (validity of covenants)
128. *New Jersey v. Kolcz* 276 A 2d 595 (constitutional right to free speech for political info)
129. *Ocean Trail unit Owners Assn., Inc. v. Mead*, 650 So.2d 4 (Fla. 1994) (members to pay assessments for unauthorized board acts)
130. *Pittman v. Cohn Communities* 229 SE 2d 526 (1977) (HO protest sign prohibition)
131. *Reynolds v. Schrock*, 107 P.3d 52, (Or. App. 2005) (derivative fiduciary suit against attorney).
132. *S.O.C. v. Mirage Casino-Hotel*, 43 P 3rd 243 (2001) (full spectrum of muni powers & state action; delegating functions to private persons; public/private street)
133. *Sanborn v. McLean* 206 NW 496 (MI 1925) (appearance of community as notice of covenant)

134. *Terre du Lac Assn v. Terre du Lac* 737 SW 2d 206 (quasi govt)
135. *Tulk v. Moxhay* 2 Phil. 774 (Ch 1848) (covenants and early laws)
136. ***Unit Owners Association v. Gillman*** 292 S.E.2d 378 (fines are a government power; Act doesn't give such power to Condo)
137. *West Hill v. Abbate* 261 NE 2d 196 (1969) (zoning constitutionality & covenants)
138. *Westphal v. Lake Lotawana* 95 SW 3d 144 (**quasi govt; state action thru judicial enforcement**)
139. *White Egret v. Franklin* 379 So 2d 346 (what theory to apply - constitutionalism)
140. *Wise v. Harrington Grove* NC SC No. 428A02 (2003) (**finer & penalties; covenants**)
141. *Woodmoor Improvement Assn.v. Brenner*, 919 P.2d 928, (Colo. App. 1996) (equitable estoppel against HOA).
142. *Woodside Village v. Jahren*, 806 So.2d 452 (Fla. 2002) (ex post facto amendments).
143. *Worthington Condo. Unit Owners Assn. V. Brown*, 57 Ohio App. 3d 73 (1989) (retroactive amendments)
144. *Zito v. Gerken*, 225 Ill. App. 3d 79 (1992) (returning HOA to developer did not concern issues of civil governance)

B. Restatement Third, Property (Servitudes)-- in part

Note: The Restatement, formally the Restatement of the Law Third: Property - Servitudes, is not statutory law but common law, which is court made law as a result of prior court opinions. States first look to statutory law and in the absence of pertinent laws will look to common law for persuasive authority. The Restatement is the work of lawyers under the publisher, ALI, who “summarize” numerous court opinions into a workable, understandable set of guidelines to be applied to issues to be decided by the courts. As “persuasive authority”, such restatements are not binding upon the court.

See webpage for selected sections:

http://pvtgov.org/pvtgov/ahlis/restatement_servitudes.pdf

C. Secondary sources

THE TRUTH ABOUT THE EMERGENCE AND QUIET ACCEPTANCE OF PLANNED COMMUNITIES AND HOMEOWNERS ASSOCIATIONS, George K. Staropoli, (unpublished http://pvtgov.org/pvtgov/downloads/hoa_truth.pdf).

16 C.J.S. Constitutional Law § 82 (waiver of constitutional rights)
17A C.J.S. Contracts § 213 (agreements in violation of constitution)
19-SUM Comm. Law 24, Coon, sign restrictions in residential communities (large HOAs are public bodies)
29 Real Est. L J 322, Womack & Timmons, Homeowners associations: are they private governments? (public functions test)
30 Val. UL Rev. 509, Rishikof and Wohl, Private communities or public governments: the state will make the call
31 C.J.S. Estoppel and Waiver § 67 (waiver of rights, statutory rights)

33 St. Mary's L J 323, Pena, Reigning in property owners' associations' power: Texas' need for a Comprehensive Plan³⁴ Am. Jur. POF 3rd, Violation of restrictive covenants³⁴ Urb. Law 521, Rahe, the right to exclude: preserving the autonomy of HOAs

35 Urb. Law 177, Franzese & Guth, Ramapo looking forward: gated communities, covenants and concerns (state constitution application to property rights)

65 ALR 5th 1, Privatization of governmental services by state or local governmental agency

7 J. Land Use & Envtl. Law 203 (constitutionalism & legal failures)

76 Am. Jur. POF 3rd 89

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Administration of Condominium and Home Owner Associations, 12 Wake
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Mich. Law Rev. vol. 102, Gardbaum, The horizontal effect of
Constitutional Rights (US Cons. supremacy clause leads to no issue of
state action)
Reichman, Residential Private Governments: An Introductory Survey, 21.
43 U Chi L Rev 253 9 (HOAS as a legal trust; voluntary consent)
**Restatement of Property, Servitudes 3d, Common Interest Properties
Restatement (Third) of Property, Servitudes, Westgroup, 2000**
§ 6.7(3). Absent specific authorization in the declaration, the common-
interest community does not have the power to adopt rules, other than
those [designed to protect the common property], that restrict the use
or occupancy of, or behavior within, individually owned lots or units.
Rule of Law in Residential Associations 99 Harv. L Rev 472 (1985)
(constitutional rights)
Steven Siegel
1. Co-author of **AARP amicus brief to NJ Supreme Court** in the
2007 Twin Rivers HOA free speech appeal.
2. **The Constitution and Private Government: Toward the
Recognition of Constitutional Rights in Private Residential
Communities Fifty Years after *Marsh v. Alabama***, vol.6, issue 2,
Wm & Mary Bill Rights J., (Spring 1998).
3. **Trust and Community: The Common Interest Community as
Metaphor and Paradox**, Paula A. Franzese and Steven Siegel, vol.
72, Mo. L. Rev., 1111 (2007).
4. *The Public Role in Establishing Private Residential Communities:
Towards a New Formulation of Local Government Land Use Policies*

*That Eliminate the Legal Requirements to Privatize New Communities
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5.

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4 Mary Jo Cornish wd. 1964

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341 (1949) (equal protection and classification of persons)

2.