

A Research Note on:

HOME OWNERSHIP IN THE COMMON-INTEREST DEVELOPMENT

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ABSTRACT

Over the past 20 years, there has been an important change in the structure of home ownership. For millions of Americans, home ownership is now accompanied by mandatory membership in a home owners' association and by shared ownership of private property in a common-interest development (CID), which includes condominiums, planned developments, and cooperatives. The CID adds complex new responsibilities to home ownership. These obligations are poorly understood not only by home buyers, but also by realtors, planners, and other professionals in industry and government. In this paper, the origin, extent and structure of the common-interest developments in the United States today is described. Some of the problems resulting from misunderstanding this type of ownership are enumerated.

STRUCTURE AND RESPONSIBILITIES OF THE COMMON-INTEREST DEVELOPMENT

Common-interest developments are characterized by: (1) shared ownership of private property, (2) rules governing the use of shared and individual property within the development, and (3) a mandatory owners' association that manages the common property, enforces the rules, and collects assessments from owners to support its activities. The shared property may include all or part of residential buildings, infrastructure (such as roads, sewers, and parks), recreational facilities (such as pools and community centers), and lawns, hillsides, and other open space. Individual property within a development may range from the airspace within an apartment unit to an entire detached house and its surrounding yard. The rules, usually referred to as conditions, covenants, and restrictions (CC&Rs), govern use of common property, specifying, for example, areas of resident and visitor parking or times when the pool may be used. They may also regulate use of individual property in great detail. CC&Rs may, for example, mandate carpets to reduce noise, restrict the presence of children or pets, and determine the color of draperies or the presence of screen doors. Assessments are collected from each owner to pay for maintenance and provide services such as lawn care or security. Owners who do not pay are subject to liens against their property and even foreclosure and loss of ownership. Administration and enforcement of CC&Rs and collection of assessments are handled by an owners' association, whose governing board is generally selected on the basis of one vote per unit owned.

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Common-interest developments can be organized as condominiums, planned developments, or cooperatives. In condominium developments, each owner owns his or her own unit and also owns an undivided interest in the common property, which is managed by the owners' association. In planned developments, each owner owns his or her own unit while the association, in which each owner is a voting member, both owns and manages the common property. In the cooperative, all property is common and owners hold an exclusive right to the use of a particular unit. In the United States, apartment buildings are usually organized as condominiums, developments of detached houses are usually organized as planned developments, and both forms are widely used for townhouse developments, but any legal form may accompany any particular building type.

The term *planned development* should not be confused with the *planned-unit development* or PUD. The PUD refers to a development that is planned through negotiation with the local planning department to allow more flexibility than is possible with traditional zoning. Such developments may meet density goals through clustered housing with protected open spaces rather than detached houses with large lots. Residents in PUDs are often organized into planned developments or condominium owners' associations, but this is not necessarily the case.

ORIGINS OF THE COMMON-INTEREST DEVELOPMENT

Common-interest developments are usually established by the original developer before anyone moves in. Each new buyer automatically enters into this previously established association with the purchase of a unit. CIDs can also be created in already occupied rental housing when the owner of multiple units sells the units separately, a process called condominium conversion. Finally, a group of individual owners of neighboring properties may choose to amend their property deeds to establish a mandatory owners' association and to purchase common land or construct facilities.

In the United States, the first common-interest developments were built in the early 19th century as exclusive housing developments for the well-to-do (Urban Land Institute, 1964; Schwartz, 1976). Townhouses or detached dwellings were built surrounding a private park and street, closed off from the rest of the city by gates. The property was protected by covenants restricting the use of the land to residential purposes. Some covenants even specified the acceptable race, religion, and even drinking habits of the occupants. Developments with mandatory owners' associations were widely used in the late 19th and early 20th centuries to provide higher-priced new developments with roads, street lighting, and parks. As cities developed the capacity to provide publicly owned infrastructure, many private facilities were then turned over to city ownership so tax revenues could be used to maintain them, but the owners' associations continued. Newman (1981) describes streets in St. Louis, originally private, that were turned over to city ownership, and then recently returned to private ownership.

After World War I brought a major migration of blacks to the cities in search of employment, white residents created thousands of mandatory home owners' associations--not to manage common property, but to create covenants restricting occupancy to whites. In 1948, the United States Supreme Court held that racially restrictive covenants were not legally enforceable (Vose, 1959). Many mandatory associations without common property continue to exist today in order to enforce architectural and use restrictions in their covenants.

The number of home owners' associations with responsibility for commonly owned property grew rapidly after the federal mortgage insurance system revised its rules to include condominiums and cooperatives in 1962. States subsequently passed legislation creating a standard legal framework for condominium ownership. Cooperatives, where everything is commonly owned and residents are both owners and tenants of the association, never won widespread acceptance outside of New York City. In general, American home buyers and lending institutions have been much more receptive to condominiums and planned developments, which are structured as forms of individual home ownership. This preference exists despite the owners' virtually identical rights and obligations in condominiums, planned developments, and cooperatives.

EXTENT OF COMMON-INTEREST DEVELOPMENTS

The number of condominium and planned development owners' associations expanded dramatically in the 1970s in response to nationwide economic, demographic and fiscal developments. Such associations can now be found in urban, suburban and rural areas. They have particularly changed the shape of the suburbs.

The recent dramatic inflation in housing costs compared to income culminated in the first decline in home ownership rates since the Depression of the 1930s. Demographic changes have brought smaller average household sizes with fewer children. In response, suburban developers have greatly increased production of individually owned units in townhouses and low-rise apartment buildings whose shared walls and green space use less land and, thus, reduce costs. This increasing diversity of contemporary suburban development would not be possible without the mandatory owners' associations that manage the common property (Dingemans, 1975).

The fiscal problems of local governments, caused by economic stagnation, reductions in federal transfers to localities and tax limitations, accelerated the use of mandatory owners' associations with common property. Localities can minimize the fiscal impact of new developments, including those of traditional detached houses, by requiring the developer to provide privately owned infrastructures such as streets, street lighting, visitor parking, water and sewer lines, and parks and playgrounds. Local governments can also require the establishment of owners' associations that have the responsibility for ongoing maintenance (Dowden, 1980; Longhini and Mosena, 1979).

Finally, the effects of economic and demographic changes include the gentrification of some central-city neighborhoods as individuals with higher incomes displace lower-income residents in areas with easy access to expanding downtown financial and service districts. Conversion of apartment buildings from rental to condominium ownership and construction of new condominium apartments both serve the new residents' desires for home ownership and create common ownership of apartment buildings, which must now be managed by an owners' association rather than by a landlord.

Plausible estimates of the number of common-interest developments run as high as 100,000. There are 25,000-30,000 CIDs in California and Florida alone (Barton and Silverman, 1987; Alex Knight, Bureau Chief, Bureau of Condominiums, State of Florida, personal interview, June 22, 1987). In a number of major metropolitan areas, such as San Diego and San Jose, a majority of all new housing is now part of a common-interest development. The CIDs come in all price categories and range in size from two units to thousands of units, with the average size in California well under 100 units (Barton and Silverman, 1987).

Overall, CIDs account for at least 15 percent of all U.S. housing starts in the 1980s (U.S. Census Bureau, 1987) With a typical board composed of five people, there are approximately 500,000 people serving on the governing boards of these associations.

PROBLEMS OF COMMON-INTEREST HOME OWNERSHIP

The complex structure of home ownership in the common-interest development creates a characteristic set of problems for residents. Home ownership in a CID is typically sold as "carefree living" with an association to take care of yard work and maintenance problems and to prevent the neighbors from decreasing property values. This involves serious constraints on the owner's control over his or her own home, a situation contrary to traditional understanding of the rights of ownership. Buyers often do not understand the full scope of the powers and responsibilities of the home owners' association until they themselves do something that violates the association rules. Misunderstanding then leads to conflict between residents who are defending their concept of their rights as individual owners and the governing board, which is responsible for protecting the common interests of all owners as spelled out in the governing documents of the association.

In addition to conflicts over the rules, buyers are often poorly prepared for the responsibilities of running an association that manages common property. Seeing the association as an external "them", which is imposed upon owners, rather than as "us", buyers are often reluctant to participate in association affairs, are suspicious of the governing board, and are prone to accusations of incompetence and theft. When an owner is dissatisfied, the threat of an individual lawsuit is far more common than an organized effort to elect new candidates to the governing board.

These difficulties are found in all types of common-interest developments and do not seem to be much affected by whether the development is made up of apartments, townhouses, or single-family detached residences (Barton and Silverman, 1987). A complex combination of individual and common ownership is at the root of these problems.

Research into alternative forms of housing traditionally emphasizes different types of building structures. In view of the growing importance of common-interest home ownership, attention should also be focused on the need for housing researchers to incorporate these alternative-ownership structures into their concerns.

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