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The Political Life of Mandatory Homeowners' Associations

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A quiet evolution has occurred in local politics, shifting part of the political process into the private framework of the mandatory homeowners' association, what this volume refers to as the residential community association. It is well known that common interest developments (CIDs), where common property and community rules are maintained by a mandatory homeowners' association, have assumed some of the traditional responsibilities of local government, such as road maintenance and enforcement of parking regulations. What is less well understood is that they have also moved politics into a private setting. We will suggest that political life in a private setting shares many characteristics of more usual forms of political behavior, but that it also poses special problems because of the dominance of cultural models that separate private life from politics.

In our view, the mandatory homeowners' association in a common interest development is a privately owned political entity—a private government. In the following pages we will use the findings of the first statewide survey of homeowners' associations in California to describe their political life. We argue that the privatization of public functions does not result in the end of politics, but rather in the encouragement of the use of private models of social involvement, with the result that residents have serious difficulties in mediating and resolving their differences. We conclude that caution is needed in using homeowners' associations to carry out traditional public functions and that this form of privatization requires government support and regulation to function successfully.

Politics and the Private Sector

Politics, according to Bernard Crick, is the means by which civilized people reconcile their differences and arrange to cooperate with each other without resorting to violence.[1] Politics is an inherent part of life wherever people must associate themselves. The important phrase is "must associate." If the relationship is voluntary, then politics is not necessary—people who disagree simply separate, unless there are preexisting sentimental ties to balance against the disagreements. When people cannot disassociate themselves, then they must either cooperate in spite of their disagreements, that is, engage in politics, or else resort to force in order to impose a decision.

Politics is a very difficult activity. To cooperate with people yet disagree with them requires constant efforts to compromise while remaining principled. When some people believe they have certain rights and when others believe they hold contradictory rights, it is difficult for both sides to work together and to grant legitimacy to each others' beliefs. It is not surprising, then, that people may distrust those who engage in politics and feel that no one would alter and compromise rights without being motivated by personal gain or power. The threat of force is ever present behind the political process.

The private sector is a domain supposedly shielded from politics. Although it is well understood that the rights and limitations of property ownership are determined within a political process, it is also assumed that once people purchase property their rights as property owners create a zone of freedom. Within this zone, they are free to choose to associate themselves with neighbors or to remain separate. Politics can intrude, of course. Voters may require growth controls, neighbors may ask for zoning restrictions, or builders may propose new uses in the vicinity. But the decision to engage in the public political process is voluntary, and the activity is oriented toward external governmental channels. Further, when neighbors associate themselves and their property voluntarily, it is usually to implement common goals on which there is little disagreement, typically to increase the value of their property. Such business or community relationships are matters of private choice rather than public necessity.

This model of the separation of private and political life has never been completely accurate, but it is particularly inappropriate when we consider the common interest development. There, private ownership of property serves to join owners together in a mandatory homeowners' association rather than separate their domains. Our research on CIDs explores the difficulties that result from the creation of political life within the private sector.

A California Survey

In 1986 and 1987 we carried out a study of CIDs for the California Department of Real Estate.[2] The research first involved interviews with 25 individuals, such as lawyers, managers, and developers, who are involved with these associations in a professional capacity. We then conducted a statewide random survey of board presidents of these associations, using the state corporations, listings of non-profit, mutual benefit associations to draw a sample of associations. We received 579 usable returns, representing a 77 percent response rate.

Since the following analysis draws on the survey results, it is important to point out potential sources of bias in the returns. We are aware of two such sources. First, small associations, which are less likely to incorporate and thus to appear in the sampling frame, are underrepresented. Second, we would guess that poorly managed associations are underrepresented. Such associations are more likely to be negligent in updating their corporate listings.

Furthermore, internal analysis shows that the less well-managed associations were later in returning their questionnaires. It is to be expected that the nonreturns included a high percentage of such associations. Late returns were not distinguishable in any other way. They were, for example, no different in size, price, housing type, or type of management.

Finally, we supplemented the survey with 12 case studies in which we interviewed board members and managers, looked at association documents, attended a board or annual meeting, and interviewed other people active in the association. In all, we conducted 50 interviews with association members.

Politics and the CID

Common interest developments may be organized as condominiums, planned developments, and cooperatives. They are defined by the presence of common property, by rules governing the use of common and individually owned property, and by a mandatory homeowners' association whose elected board has the responsibility for enforcing these rules for maintaining the common property and financing their activities through assessments on all property owners. These attributes involve the board and membership of the association in political activity.

The CID unites owners in an involuntary relationship. Members do not choose or necessarily even like each other, yet they own property in common. Because property is jointly owned, members must establish a set of guidelines for its use and upkeep. Typically, this is accomplished by the developer, who provides a set of governing documents before any owner purchases property.

Once established, these rules are binding. Members and residents who violate them can be punished by the denial of use privileges; by fines, liens, and even foreclosure; and in extreme cases by prison terms. Only with the vote of a majority or super-majority can the rules be changed. Thus, owners and residents must abide by the preexisting rules just as do new residents of any municipality.

These rules create standards that permit residents and owners to live together and maintain the common property in ways that sometimes preserve the rights of the group or a subset of the group at the expense of individual members. The governing board of a homeowners' association has to engage in politics in order to determine the extent of the boundaries of rights and obligations of the residents and owners. For example, the process by which an association decides whether absentee owners have equal rights to use limited common area facilities, or whether renters can serve on advisory boards, is no less political than the process a small New England municipality employs to set guidelines for the use of its town docks.

The political process in the CID is far from easy, and tensions are myriad.[3] To begin with, tensions result from the diversity of backgrounds and interests of the membership. The interests of residents with and without young children, for example, can come into conflict. Children are more likely to violate rules for public behavior than adults, and those without children may be less than sympathetic to this.

We found in our survey that associations with a mixture of residents in different stages in the life cycle were more likely to report rule violations, even when the percentage of households with young children was held constant. We took this to mean that such associations had greater conflicts about how the rules should be interpreted.

Furthermore, people in different stages of the life cycle have different interests. In one of our case study associations, for example, the developer promised some of the owners that a children's play area would be constructed, but did not actually build one. After the association was turned over to the owners, interested parties petitioned the board for children's play equipment. The only possible location for the installation of the equipment was the grassy area outside the residence of a couple who did not want such an area to be constructed and who certainly did not want it in front of their window. They argued that they had purchased a unit with no such neighboring activity and had the right to maintain it that way. The issue was referred to the larger association for a vote, and the proposal to build a play area was defeated. However, at least some of those who had initiated the request still felt embittered toward their neighbors.

Another source of continuing conflict can occur between those who wish to devote resources toward the future maintenance and enjoyment of the property and those who are more interested in preserving their individual resources. Absentee owners are more often interested simply in keeping their costs low, while resident owners are more interested in the quality of life in the association.

Since rule changes and dues increases often require a specified majority of all owners rather than of all voting owners, absentee owners can defeat initiatives, simply through disinterest by not voting at all, as well as by voting against dues increases which would increase their costs.

Such conflicts can also occur among resident owners. People differ in the amount of money they have available. Those who are "house poor" may not be able to afford the special assessments necessary to build up reserves or make improvements. Indeed, several of the board presidents we interviewed spoke of how high special assessments for legal fees forced some homeowners into default and ultimately into loss of property. Even those who can afford increases may be disinterested because they intend to sell shortly. As one board president wrote us, conflicts in a small homeowners' association between those who desired to live there permanently and those who wished to sell rapidly destroyed their prior friendships.

The greatest barrier to effective political debate occurs, however, not because owners and residents are heterogeneous, but because they share similar understandings of the meaning of private property. The conflict here is less between individual owners than it is between any owner and the association as a whole. Private property ownership, particularly of residential property, might be thought to bring absolute control over decisions governing use and alterations of property. In truth, this freedom is relative in all neighborhoods. Homeowners share property boundaries and neighborhoods with other residents. Whether it be a loud stereo versus uninterrupted sleep or a building expansion versus an unrestricted view, the rights of one individual to use and enjoy property as desired limits the rights of his or her neighbors. This is recognized formally by laws that place legal controls over acceptable uses of property.

Furthermore, most homeowners expand their definition of ownership to include the larger neighborhood, and feel they have purchased the rights to a particular kind of area. Institutionalized in the form of zoning and other land use regulations, this can place restrictions on individual actions. One household's rights to a neighborhood where all buildings look alike violates another's right to change the appearance of the home to suit personal tastes.

Negotiations over the appropriate definition of rights is an inherent activity in all neighborhoods. However, in non-CID developments, especially where there is some separation between dwellings and a homogeneous population, the range of negotiations is usually limited and the sphere of legal controls circumscribed.

In CIDs, because property is owned in common and the governing documents usually place exhaustive restrictions on the uses of individual and common property, negotiations over the arena of seeking to stay with them after some domestic disaster.

Of course, owners unhappy with the association have the option of moving, but this has high personal and financial costs, especially if the owner is unable to find a buyer at an acceptable price. Prices in the condominium market have not appreciated at the same rate as those of conventional housing. We might expect the resale value in troubled associations, precisely the ones owners might be most eager to leave, to be particularly affected.

To the extent that an owner has a choice about moving into an association, this choice is typically poorly informed, and there are high costs involved in making a new choice. The mandatory homeowners' association is thus as much an involuntary association as any small town government.

The inadequacy of the consumer model can best be seen by the actual behavior of residents and owners in the association. It is a rare association that does not have problems with violations of the governing rules—only 7 percent report no such problems and 25 percent report at least one violation so intractable that they were unable to resolve the problem. Furthermore, members of the association often react with anger to the limitations of the governing documents. Several of the board presidents in our case studies reported that they had been threatened with bodily harm by a resident, typically over parking infractions. It is indicative that 44 percent of the boards in the survey had been personally harassed, openly accused, or threatened with a lawsuit by a member in the past year; a strong predictor of such harassment was violations of the governing documents. Such extensive rule violations and expressions of anger indicate that most associations contain people who did not, in fact, want this particular mixture of home ownership and restrictive rules.

For these reasons, the emphasis on consumer choice is misplaced. Some people have the financial resources and/or knowledge to self-select for this type of housing, but they probably constitute a minority of all purchasers. Instead, residents and owners often find themselves in situations that violate their expectations.

Models of Community Associations[4]

Public functions that are removed to the private sphere become intertwined with widely shared models of the meaning of private ownership, models that equate ownership with individual rights to decide the use of property. Members support the restrictions inherent in the CID as they apply to others, but resent the restrictions on their own activities. Believing they have purchased a neighborhood as well as a home, they expect to maintain individual control over both.

For example, unauthorized changes to individual dwellings—changes such as a skylight cut through a commonly-owned roof or an unauthorized alteration of a balcony—were the types of governing document violations least amenable to resolution. Members took the individual residence to be entirely their own—they did not understand the notion of common property, of which they held exclusive use but not individual ownership. They did not see why they could not do as they pleased. As in the case of the individual who did not see why he should pay for repairs to a commonly owned roof over a neighbor's unit when his own roof did not leak, they further often did not understand their responsibilities for property they did not directly use.

Owners had problems understanding the general meaning of the association, and its proper role as a governing body. Their most typical model was that of a management company, which would take over many of the onerous responsibilities of home ownership. This was encouraged by the sales practice of marketing associations as "carefree living."

For example, one sales team explained that "they" (the association) took care of things like maintenance for the owner, but stressed that "you" are the association and thus decide how property is to be used.

The other typical understanding of the association, usually held in combination with the first, is that of a community of friends and neighbors. In this view, dissent and disagreement are forms of unfriendly conduct. Boards may be reluctant to enforce the rules—a form of unfriendly behavior—but become actively hostile when criticized, taking it as a personal attack and a denigration of their sacrifice in serving on the board. The idea that dissent is valuable to a democratic government is obscured by these privatized understandings of the association.

However, people who use these models have to confront the reality of the homeowners' association in a CID, a reality that includes a board with the responsibility for enforcing rules of use and behavior. Members react to this tension in several typical ways. The most common way is to not participate. The median percentage of people serving on boards, committees, or in some voluntary basis was 11 percent. Board size is set by the governing documents. If we look only at people who serve on committees or in some other way, the average so assisting the association is one-half of a percent. Only 21 percent of the associations' boards characterized their membership as giving them support. In 16 percent of the associations, fewer people ran for the board in the last election than the number of seats open.

When members have to confront the board directly, they have no constructive model for doing so. They view the board in two ways, often at the same time: (1) as a management company placing unfair restrictions on them or inadequately doing the job that the association fees supposedly purchased; and (2) as a group of neighbors with unfair powers rather than upholders of a public trust. As a result, members react with anger and sometimes overt hostility to the board's actions.

While the CID includes political functions, the membership is ill-prepared to cope with them. Cultural understandings of the rights associated with individual property ownership and the separation of private and political life lead to many of the characteristic problems of the CID.

Conclusion

Residential community associations pose special challenges to their members and residents, challenges that outstrip the capacities of many associations. Here, we have argued that a CID virtually necessitates that residents and owners engage in a political process, a requirement that demands violation of general cultural mores with regard to private property.

The CID increases owners' and residents' dependency on the financial fortunes, knowledge, and good sense of their neighbors. Members of associations that are mismanaged or plagued by owners in default of their assessments may find themselves faced with unanticipated high special assessments and/or with unsaleable units.

To function successfully, a CID requires both managerial and governing skills. Further, all buyers—buyers of moderate income in particular—need education about their purchase and protections against the potential hardships that are posed by this type of ownership. Good professional management can solve some of the problems of CIDs. However, boards, often unaware of the issues involved, may not know enough to recognize good management when they see it, and are under pressure from the membership to keep dues and management expenses low.

Furthermore, many associations are too small to afford professional management. We found that the average size of associations in California was 43 units, and that the average size of projects built in the last several years has decreased to 32 units. Most associations of 43 units or less are self-managed.

We have also found that professional managers can exacerbate the problems of low participation and commitment to the association, even as they solve problems of maintenance and financial planning.

Voluntary organizations, such as the Community Associations' Institute, can play a valuable educational role. Many CID officials, however, are unaware of the existence of such organizations. Furthermore, there is no easy way to reach these homeowners' associations to inform them of available resources.

In the end, dealing adequately with many of the problems of CIDs will require resources only local and state governments possess. Ironically, this form of organization, which is supposed to reduce dependence on local government, will function most successfully with government support and regulation.

We suggest that government has several roles to play with regard to residential community associations: (1) it should act to ensure that consumer choice is in fact maximized; (2) it should protect the rights of individual owners and residents; and (3) it should protect and enhance the political process within CIDs and try to make the process as open and democratic as possible.

Extensive information and education are needed to create real consumer choice. This means requirements that sellers of both new and resale homes provide prospective buyers with a clear summary statement of the nature of the CID, and the relationship between the individual owner and the homeowners' association. Prospective buyers and renters also need readable summaries of association rules and residents' rights and responsibilities. Buyers also need regular information on the financial and physical condition of the association. The reserve study requirement in California has proven itself a particularly valuable tool, both for informing the membership and for teaching basic management skills to volunteer boards. Such regulations serve the dual function of ensuring adequate information and requiring the basics of good management practices.

Informed consumers do not exist without informed boards. The board of directors is the main source of information for new owners and residents. State registries of CIDs are essential to enable both private and public organizations to reach boards with information. As we have mentioned many, CIDs are not connected to existing professional networks.

We have argued extensively that an individualistic consumer model cannot prepare people adequately to govern a CID. Similarly, the protection of individual rights and enhancement of the democratic process are closely related. Until recently, the primary concern of state law governing CIDs has been protection of individual owners from majority rule, with requirements for super-majorities to raise assessments or change association rules. More recently, California law has recognized that allowing a recalcitrant minority to block board decisions may in fact violate important rights of other individual owners and lead to physical deterioration.

Ultimately, each owner should have the same protections as any American citizen: the right to fair and open procedures and the right to try to persuade one's fellow citizens. Regulations which ensure adequate consumer information also help create informed citizens, capable of participating in governing their association.

Government support is urgently needed to ensure open meetings, full access to records, and fair and free elections in private governments. Cases of electoral fraud or manipulation are relatively rare, but they do occur, and they strike to the heart of owners' recourse against improper or ill-advised actions by the governing board. We believe that some mechanism, such as a petition by 10 percent of the owners, should be able to bring a state observer to oversee elections, or rerun elections in which there is evidence of manipulation.

In addition, the role of the governing board as both prosecutor and judge is a troubling one, which calls for the creation and use of trained third-party arbitrators who are familiar with CIDs.

The exclusion of renters from a role in the government of the CID, combined with the membership of absentee owners, is in violation of long-standing traditions of local democracy. We suggest a split vote, one each for residents and owners, with resident owners thus having two votes. This solution recognizes the extent to which CIDs combine functions of local government and property management.

We argue that this private government needs public assistance, but we make a more radical argument as well. We suggest that the CID is a troubled and overused form of government. As entry-level housing in many areas becomes increasingly restricted to CIDs, government needs to encourage alternatives, such as creative use of small lots and use of public roads and parks to make entry-level housing without common property possible in areas of high land costs.

Further, there is no reason why property management must also be accompanied by such detailed control over people's behavior and property. If CIDs are to be controlled entirely by owners, then let them have the functions of property managers, and cease to act as combinations of police and planning departments. At present, we have people who think they are only property managers being forced to act as political officials, without either the powers or legitimacy of such officials.

For this reason, we suggest that many CIDs be gradually phased out, or their responsibilities be reduced, to make them increasingly flexible. After this is done, the membership can adapt the rules more easily to their current circumstances. In particular, we suggest efforts to reduce the internal rules. Reducing the domain of collective control will result in reduction of the domain of political decisionmaking within the association. In that way, the private model of individual consumer choice will come closer to reality, and more of the political process will be returned to the realm of local government, where we firmly believe it belongs.

Notes

[1] Bernard Crick, *In Defense of Politics* (New York: Penguin Books, 1982.)

[2] Stephen Barton and Carol Silverman, *Common Interest Homeowners' Associations Management Study* (Sacramento: California Department of Real Estate, 1987).

[3] See also "Overcoming Conflicts and Frustration in Running a Community Association" *Common Ground* (September-October 1987).

[4] Stephen Barton, "Property, Community, Democracy: The Beliefs of San Francisco Neighborhood Leaders," Working Paper #462 (Berkeley: University of California, Institute of Urban and Regional Development, 1987); Carol Silverman, "Neighboring: Private Lives and Public Roles," Working Paper #468 (Berkeley: University of California, Institute of Urban and Regional Development, 1987).

[5] The data reported in this section are presented in Barton and Silverman, *Common Interest Homeowner's Associations Management Study*.