Title

Homeownership in the Common-Interest Development

Authors
Barton, Stephen E.
Silverman, Carol J.

Publication Date
1987-10-01

Peer reviewed

Homeownership in the Common-Interest Development

Stephen E. Barton
Carol J. Silverman

Working Paper No. 469

October 1987

Institute of Urban and Regional Development
University of California, Berkeley

The authors share equal responsibility for this article. The Common Interest Development Development Study was supported by Contract #85-299 with the State of California Department of Real Estate. Writing was supported by a grant from the Harris Trust of the Institute of Governmental Studies, University of California at Berkeley.

Homeownership in the Common-Interest Development

Over the last 20 years, there has been an important change in the structure of homeownership. For millions of Americans, homeownership is now accompanied by mandatory membership in a homeowners' association and by shared ownership of private property in a common-interest development. The term common interest development includes condominiums, planned developments, and cooperatives, and refers to the ownership of property in common with other homeowners. The common interest development (CID) adds complex new responsibilities to homeownership, responsibilities which are poorly understood not only by homebuyers but realtors, planners, and other professionals in industry and government. These new responsibilities have serious effects on residential satisfaction. In the following article, we will briefly describe the origin, extent, and structure of the common-interest developments in America today, and enumerate some of the problems resulting from misunderstanding of this type of ownership.

A. Structure and Responsibilities of the Common Interest Development

Common-interest developments are characterized by shared ownership of private property, rules governing the use of both shared and individual property within the development, and by a mandatory homeowners' association which 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, generally called conditions, covenants, and restrictions (CC&Rs), govern use of common property, specifying areas of resident and visitor parking, or times when the pool may be used, for example. They also may regulate uses 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 drapes or 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. All of these functions are handled by an owners' association, whose governing board is generally selected on the basis of one vote per unit owned. CIDs 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 homeowners' 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 use of a particular unit. In the United States, apartment buildings are usually organized as condominiums, developments of detached houses 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 which was 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 space rather than detached houses with large lots. Residents in PUDs are often organized into planned development or condominium homeowners associations, but this is not necessarily the case.

In our recent survey of CID board presidents in California (Barton and Silverman, 1987), we found the following distribution of ownership and building types.

Legal Organization by Building Structure

	Detached	Townhouse	Apartment	Mixed	Total
Condominium	4	34	24	5	67%
Planned Development	11	11	1	3	26%
Cooperative	0	*	1	*	1%
Don't Know	3	2	*	*	6%
TOTAL	18%	48%	26%	8%	100% (N=573)

*=less than one percent.

The numbers presented represent the percent of the total number of cases. We have found that board presidents themselves do not always understand the differences between the various legal types of organizations, and that even governing documents may refer to an association as a planned development in one place and as a condominium in another. The distributions reported may be affected by these difficulties. (We should also note that mobile home parks, which can be owned in common by the homeowners, were excluded from our study.)

B. Origins of the Common Interest Development

Common-interest developments are usually established by the original developer before anyone even moves in. Each new buyer then automatically enters into this previously established association upon purchase of his or her 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 such a mandatory homeowners' association and to purchase or construct common land or facilities.

In the U.S., 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, and protected by covenants restricting the use of the land to residential purposes and specifying the acceptable race, religion, and even drinking habits of the occupants. Developments with mandatory homeowners' 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 that tax revenues could be used to maintain them but the homeowners' association continued.[1] After World War I brought a major migration of blacks to the cities in search of employment, white residents created thousands of mandatory homeowners'

----

[1]Newman, 1981, describes streets in St. Louis which were originally private, turned over to city ownership, and then recently returned to private ownership.

associations; not to manage common property, but to create covenants restricting occupancy to whites. In 1948, the U.S. 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 homeowners' associations with responsibility for commonly owned property again grew rapidly after the federal mortgage insurance system revised its rules to include condominiums and cooperatives in 1962 and the 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 homebuyers and lending institutions have been much more receptive to condominiums and planned developments, which are structured as forms of individual homeownership, despite the owners' virtually identical rights and obligations in condominiums, planned developments, and cooperatives.

C. Extent of Common Interest Developments

The number of condominium and planned development homeowners' associations expanded dramatically in the 1970s as a response to nationwide economic, demographic, and fiscal developments. They can now be found in urban, suburban and rural areas alike, and have particularly changed the shape of the suburbs. The dramatic inflation in housing costs compared to income culminated in the first decline in homeownership rates since the depression of the 1930s, and 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 homeowners' associations which 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 homeowners' 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 infrastructure such as streets, street lighting, visitor parking, water and sewer lines, and parks and playgrounds, and to establish homeowners' associations with 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 higher-income people displace lower-income residents of 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' desire for homeownership and create common ownership of apartment buildings, which now must be managed by a homeowners' association rather than a landlord.

Plausible estimates of the number of common-interest developments run as high as 100,000, twice the number of local government bodies, and there are 25-30,000 in California and Florida alone.[2] In a number of major metropolitan areas, such as San Diego and San Jose, the large majority of all new housing is now part of a common-interest development. They come in all price ranges and range in size from under ten units to thousands of units, with the average size in California well under 100 units.[3] Overall, they account for at least fifteen percent of all U.S. housing starts in the 1980s (U.S. Construction Reports, Series 20, 1987). With a typical board of five people, there are in the neighborhood of 500,000 people serving on the governing boards of these associations, as well as millions of residents.

D. Problems of Common Interest Homeownership

The complex structure of homeownership in the common interest development creates a characteristic set of problems for residents. To start with, homeownership in a CID is typically sold

----

[2]There are an estimated 13-16,000 in California (Barton & Silverman, 1987) and 13-15,000 in Florida; Alex Knight, Bureau Chief, Bureau of Condominiums, State of Florida, interview, June 22, 1987.

[3]Mean size 88 units. Median size 43 units. (Barton & Silverman, 1987.)

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 places serious constraints on the owner's control over his or her own home, a situation which is contrary to traditional understanding of the rights of homeownership. As a result, buyers often simply do not understand the full scope of the powers and responsibilities of the homeowners' association until they themselves do something which violates the association rules. Misunderstanding then leads toconflict between people 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 which manages common property. Seeing the association as an external "them" which is imposed upon homeowners rather than as "us", they are often reluctant to participate in association affairs, suspicious of the governing board, and prone to accusations of incompetence and theft. When a homeowner 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). The 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 homeownership, we would like to call attention to the need for housing researchers to incorporate these alternative ownership structures into their concerns.

References

Barton, Stephen E., and Carol J. Silverman, 1987. Common-Interest Homeowners' Associations Management Study, State of California Department of Real Estate, Sacramento.

Black, Corinne Manning, 1977. "Utopia Lost: Aspects of Conflict in a New Planned Suburban Community," Ph.D. dissertation, Rutgers University, New Brunswick.

Dingemans, Dennis J., 1975. "The Urbanization of Suburbia: The Renaissance of the Row House," Landscape, 20 #1 (October): 20-31.

Dowden, C. James, 1980. Community Associations: A Guide for Public Officials, Urban Land Institute and Community Associations Institute, Washington, D.C.

Keller, Suzanne, 1986. Creating Community: The Role of Land, Space, and Place, Lincoln Institute of Land Policy.

Longhini, Gregory, and David Mosena, 1979. Homeowners' Associations: Problems and Remedies, Planning Advisory Service Report #337, American Planning Association, Chicago.

Newman, Oscar, 1981. Community of Interest, Doubleday, N.Y.

Rosenberry, Katherine, 1985. "Condominium and Homeowner Associations: Should They Be Treated Like 'Mini-Governments'?," Zoning and Planning Law Report, 8 #9: 153-158.

Schwartz, Joel, 1976. "Evolution of the Suburbs," pp. 1-36, in Philip C. Dolce, ed., Suburbia, Anchor Books, Garden City.

Vose, Clement, 1959. Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases, University of California Press, Berkeley.

Walker, Vivian Gannaway, 1984. "Striking the Balance: The Development of Social Control in Condominium Associations," Ph.D. dissertation, Northwestern University, Evanston.

Wekerle, Gerda R., et al., 1980. "Contradictions in Ownership, Participation and Control: The Case of Condominium Housing," pp. 170-191 in Clare Ungerson and Valerie Karn (eds.), The Consumer Experience of Housing: Cross-National Perspectives, Gower Publishing, Farnborough.

Urban Land Institute, 1964. The Homes Association Handbook, Washington, D.C..