

Home Is Where The Rules Are

Love That Private Government

By Robert H. Nelson
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The professional woman from Southern California had never thought she'd live in a planned development -- until she decided to buy a house. She was looking at one in a neighborhood with no homeowners association, where the next-door neighbor had built a dog run on the property line. "All night long his Dobermans ran back and forth," she said. That's when she decided to become one of the 55 million Americans -- a remarkable 18 percent of the population, and rapidly growing -- who now live under the governance of a community association.

Twenty-five years ago, Ronald Reagan argued that government is the problem, and Americans need less of it. Yet today, many people who once voted for him are demanding much *more* government, though on the smallest scale and at the lowest level possible -- in their neighborhoods. And they prefer that their powerful new governments be private.

Across the country, community associations -- which include housing developments run by condominium, co-op and homeowners associations -- are spreading faster than the crabgrass they probably require you to root out of your lawn. Though often depicted as restrictive and even tyrannical, these private governments represent a number of positive developments, from restoring an active, innovative local democratic process to bringing back the sort of community that has long been in decline in this country. And their status as the wave of the future can't be denied: Tens of millions of Americans have been voting for them with their moving vans.

In 1970, only 1 percent of us lived in association-governed communities. Between 1980 and 2000, fully half of the new housing built in the United States was in such communities. In fast-growing parts of the country, especially in the South and the West, essentially all new development involves private community associations.

When historians look back on the last decades of the 20th century, they may well see the associations' rapid spread as a phenomenon with the same social and economic importance as the rise of business corporations at the end of the 19th century. Where Americans of that era collectivized private ownership of industrial property, today we are collectivizing residential property ownership -- and literally transforming local government as we go. Traditional individual rights of ownership are giving way to group rights of the whole neighborhood -- a sort of paradoxical "private socialism," American-style.

In the 1960s and '70s, a powerful new individualism swept through American society. This had its benefits, but it also left many people looking for new sources of connection in their lives and, more recently, finding it privately in neighborhoods. And in these neighborhoods, community associations could successfully manage tennis courts, golf courses, swimming pools, open space

areas and other services enjoyed by the whole community. Today, they increasingly collect the garbage, clean the streets, plow the snow, cut the grass, maintain jogging trails and hire security patrols -- providing, in short, more and more of the services that local governments are supposed to provide, but frequently fall short on.

Moreover, with rapidly rising land prices and people driven by economic forces to live closer together in townhouses and on smaller lots, Americans want tighter controls over what goes on nearby. More and more, we're willing to give up certain elements of our personal autonomy to gain greater control over others. So a private community can dictate the color you paint your house, where you locate fences and shrubbery, where you park your car, which way your new deck faces -- and much more. A 51-year-old California woman once received an official reprimand from her condominium association accusing her of "kissing and doing bad things for over one hour" while parked in the driveway with a local businessman, and threatening to fine her if it happened again.

A community association can be as small as a building or as large as a mid-size city like Reston, Va., or Columbia, Md. The average size, however, is a neighborhood of about 200 to 300 housing units. Members must agree to a community's rules at the time they buy their homes. So in older parts of the country, where individual ownership of properties has long been the norm, it's almost impossible to create a new community association in a settled neighborhood -- although I think new state laws to make this possible could be a desirable development, helping to revitalize the inner city and other urban neighborhoods.

As it stands, the older cities of the Northeast and Midwest are surrounded by many small municipalities. According to the 2002 Census of Governments, the Chicago, Cleveland and Detroit metropolitan areas had 569, 243 and 335 local governments, respectively. The greater Phoenix area, by contrast, had 34, and the entire state of Arizona only 102. Las Vegas and Nevada have fewer still. In places like that, the regulatory and public service roles of the small municipality are being replaced by a system of private neighborhood governments.

This doesn't mean that local government is disappearing altogether. As the "micro" functions are privatized in the South and West, large county and other public governments still shoulder "macro" responsibilities for highways, water, sewer, courts of law, education and the like. This new pattern -- a few large public jurisdictions and hundreds of private community associations -- is rapidly coming to dominate the organization of American metropolitan governance.

Organized legally like a business corporation, a community association is governed by a board of directors elected by the unit owners. The owners may have voting "stock" in other associations, too, just as individuals can own shares of numerous corporations. This means that locally, universal suffrage is being replaced by a democracy of property owners. Nothing prevents a unit owner with a winter condo in West Palm Beach from voting in the association there and also at a summer condo in Ohio.

So community associations clearly violate the one person-one vote rule. Indeed, because they're private, they can limit freedom of speech or assembly and other constitutional rights that would be protected in the public sector. Bans on political signs, for example, are common.

At play in community associations is a clash of individual rights. The freedom to join a church or other group of choice -- the freedom of association -- can run up against other individual rights, such as freedom of speech and assembly. But Americans seem increasingly willing to accord greater weight to the group rights of association, at least locally.

Perhaps their willingness reflects a sense of decline in community in other dimensions of American life. Traditional kinds of associations, such as the Masons or the American Legion, have been in decline. Fewer Americans live close to aunts, uncles, grandparents and grandchildren. As pressures on the nuclear family intensify, people seem to be searching for new forms of small community where people with shared interests and values can live together.

Community associations may not lawfully discriminate on the basis of race, national origin, religion, sex or handicapped status. But Americans seem to want to share neighborhood space with others of similar backgrounds and beliefs. The Sunset Hall Association in Los Angeles bills itself as a "home for free-thinking elders." The stated goal of the EcoVillage community association in Loudoun County is "to live in harmony with Earth, and with one another." Communities limited to senior citizens are among the fastest-growing segments in the housing market. Developers have begun creating retirement communities for gay men and lesbians. A community association near Las Vegas, in a neighborhood designed for gun lovers, included plans for more than a dozen shooting ranges.

Moreover, their private status gives associations greater flexibility to innovate in matters of internal governance than a public government could have. Not long ago, my parents' community association in the Shenandoah Valley was having trouble getting unit owners to vote for a non-controversial amendment to the code. So, to get the minimum number of voters required, the association decided to convert the referendum into a lottery, turning each ballot submitted into a lottery ticket for modest cash prizes. (I heard about this because my parents won the \$100 third prize.) To my mind, the lottery was a practical -- and creative -- device to stimulate greater turnout, but it would have been illegal for a public local government.

Perhaps all these are reasons why so many people who live in community association neighborhoods are willing to put up with the divisions that arise when associations exercise tight controls, and when leaders sometimes turn into minor tyrants who mistreat unit owners.

As the volume of owner complaints rises, states such as Florida and California now rewrite their laws overseeing community associations on almost an annual basis. North Carolina passed a law this fall setting limits on late fees for paying assessments and fines for violating rules.

But some states may now be going too far. The stresses and strains in many community associations should be seen as part of a trial and error learning process of a major new social institution in American life. Community associations are more likely to resolve their problems successfully if they have the flexibility to try out innovative new methods and approaches.

"All politics is local," the late House Speaker Tip O'Neill once said. He didn't know *how* local. With the rise of neighborhood associations, grass-roots politics is taking on a whole new private dimension. Its chieftains are the 1.25 million men and women on the boards of America's

275,000 homeowners associations, condominiums and cooperatives -- the new lords of our suburban manors.

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