

Residential Community Associations: Private Governments in the Intergovernmental System?

**With Papers from a Policy Conference
Sponsored by the
U.S. Advisory Commission on Intergovernmental Relations**



**Advisory Commission on
Intergovernmental Relations**

**A-112
May 1989**

Preface

This policy report is one in a series of publications from a Commission project on "Rethinking Local Self-Government in a Federal System." Already published are *The Organization of Local Public Economies* (1987), and *Metropolitan Organization: The St. Louis Case* (1988). A report on Allegheny County, Pennsylvania, will be published in the near future.

Traditionally, the intergovernmental system has been thought to include the national government, state governments, and local governments of all kinds. This report suggests that the concept of intergovernmental relations should be adapted to contemporary developments so as to take account of territorial community associations that display many, if not all, of the characteristics of traditional local government.

Previous studies indicate that the vitality of local governance lies in part in the kind of diversity and differentiation among governments that can create opportunities for genuine self-government in manageable, human-scale communities. New participants enter the intergovernmental system each year. Every census of governments shows an increase in the number of municipalities and special districts serving citizens. This ever-growing intergovernmental family now should be seen as overlapping to some extent with residential community associations (RCAs). In this respect, RCAs are part of a growing phenomenon in American society: namely, the proliferation of organizations that lie within the border regions between the public and private sectors.

Established by deed covenants attached to real property, RCAs are mandatory membership associations consisting of homeowners in a subdivision or development. Although RCAs are private organizations, typically created by residential developers, they are beginning to play a role in the intergovernmental system because, like local governments, they provide quasi-public services, levy mandatory fees, and regulate resident behavior (sometimes in far greater detail than local government). Because of their functions, RCAs, like local governments, develop relationships with neighboring local governments and the state. In addition, RCAs often provide innovative opportunities for local self-government on a human scale.

RCAs can generate important benefits for their members, for developers, for local governments, and for the community as a whole. RCA members often

benefit from steady or increasing home values created by the land-use restrictions in their communities. In addition, RCAs often provide their members with a wide range of services that are not available from local government or that supplement the services provided by local government. Builders are benefited by being able to provide more attractive and marketable homes in a stable, livable environment, often at cost savings to both the developer and the purchaser. Local governments benefit by obtaining development that is self-financing, features desirable amenities, and adds to the local tax base. The community as a whole benefits from RCAs through the increased range of housing choices available to potential home buyers.

The number of RCAs has exploded during the last 30 years. Informed observers estimate that there are as many as 130,000 RCAs in the United States today, compared to fewer than 5,000 in 1960. Much of this growth results from the dramatic increase in planned unit development (PUD) zoning and condominium ownership projects.

Because RCAs are private organizations, they generally have not been recognized as participants in the intergovernmental system. Indeed, RCAs cannot be regarded as local governments in the same sense as a municipality. Nonetheless, the development of RCAs does raise intergovernmental concerns, particularly with regard to service provision, citizenship and governance, and finances and taxation.

RCAs constitute a privately organized unit for the provision of local public services. In recent years, there has been a major shift in thinking about patterns of organization of local government, particularly with regard to the delivery of services. A new consensus may be emerging around the idea that a multiplicity of local governments constitutes a "local public economy" for service delivery, which consists of a "provision side" and a "production side." Briefly, the provision side refers to making arrangements for the supply of services, and the production side refers to creating service outputs.

RCAs are clearly provision units in that they decide (1) what goods and services to provide their members, and their quantity and quality; (2) what private activities to regulate, and the type and degree of regulation; (3) the amount of revenue to raise, and how to raise it; and (4) how to arrange for the production of goods and services.

In determining what goods and services to provide, an RCA may decide, for example, to build a tennis court. An RCA may decide to regulate private activities, such as the keeping of pets. An RCA raises revenue through association fees and special assessments. An RCA makes decisions about service quantity and quality, as when it contracts for snow removal and street repair. Finally, an RCA decides how to make arrangements for the production of goods and services, often through contracts with private companies or agreements with local government.

The existence of RCAs as community provision units suggests that these private organizations substi-

tute for local government service provision. Yet relatively little is known about their service provision activities or how they influence local government.

RCAs also raise intergovernmental questions regarding citizenship and governance. RCA membership implies very different rights, privileges and obligations than public citizenship. Yet the differences are not known to most of the public. Indeed, many homeowners appear to be unaware of the implications of living in an RCA community.

Finally, RCAs pose questions regarding finance and taxation. RCAs embody the principle of fiscal equivalence—you get what you pay for and you pay for what you get. By funding their own services through dues and special assessments, RCA members retain exclusive rights to use amenities, such as swimming pools, tennis courts, play areas, and club houses, which often are not available in other communities. At the same time, because the RCAs self-finance many services, members are beginning to call on local government for tax consideration.

Strong proponents of RCAs argue that they provide for increased local self-determination and community control, greater economic efficiency in land use, more efficient and responsive service provision, more stable neighborhood land values, and more attractive residential neighborhoods.

Critics of RCAs say that many homeowners do not understand the implications of living in an RCA community and are unprepared for community control, that RCAs do not, in fact, expand consumer choice, that RCAs can reduce the efficiency of land markets, that their regulations can be excessive, and that RCA service costs may prove a burden to members, particularly those with moderate or stable incomes. Indeed, critics argue that RCAs raise a number of important questions for the intergovernmental system, including the role of local government in regulating these organizations, the extent of tax consideration RCAs may be due, the degree to which RCAs lower the cost of public services for local government, and the extent to which failed RCAs become a burden on the public sector.

RCAs, therefore, have a partial role in the intergovernmental system. To explore this role more fully, the ACIR sponsored a conference in June 1988 and conducted a nationwide survey of RCAs in cooperation with the Community Associations Institute (CAI). This publication reflects the results of those activities. We hope it will begin a dialogue on the role of RCAs in the intergovernmental system. It will be followed by another publication, a practical guide to public officials answering the most common questions officials ask about RCAs.

The Findings and Recommendations in this report were adopted by the Commission at its meeting on September 16, 1988.

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*Community Builders
and Community Associations:
The Role of Real Estate Developers
in Private Residential Governance**

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Introduction

The number of residential community associations (RCAs) has grown tremendously in the past two decades. Most of them have a very short history. A large number of the recent ones are condominium associations. Since residential condominiums were first introduced as a new form of property ownership in the United States during the 1960s, there is no real American precedent for the condominium association as a distinct organizational structure. Homeowner associations, on the other hand, have a longer tradition in this country, going back at least several generations.

The history of the initiation and diffusion of homeowner associations is closely interconnected with the rise of the community builders, the large-scale real estate developers who have played a key role in shaping the process and pattern of modern residential development in the United States. Community builders were pioneering innovators of homeowner associations during the past century, and they continue to be strong advocates for improving association financing and management.

Community builders have created and supported community associations to accomplish three main purposes: (1) to establish a mechanism for effectively enforcing and adapting deed restrictions over the long term; (2) to develop and maintain open space, common areas, recreational facilities, and other privately owned infrastructure and amenities; and (3) to provide services for the property owners and residents.

During the past century, community builders have established RCAs increasingly as a vital element in the process of developing long-term, large-scale residential neighborhoods. Major developers like J.C. Nichols of Kansas City discovered that homeowner associations were an important method

* This paper is drawn primarily from Marc A. Weiss, *The Rise of the Community Builders: The American Real Estate Industry and Urban Land Planning* (New York: Columbia University Press, 1987); see also references listed in the bibliography.

of stabilizing land uses and property values in a new community. Through these associations, residential developers have reduced the long-term risks of building new neighborhoods, and have thus been able to invest greater amounts of money into creating and maintaining a wide range of community facilities and design amenities. Community builders have learned first hand the widespread market appeal of homeowner associations, organized with automatic membership written into the deeds covering the property, financed by compulsory fees on the owners, and managed by a professional staff under the direction of the developers and a representative board of residents.

In order to maximize the market appeal of a new development, particularly over a period of years, residential developers must be able to assure prospective home buyers that a competent organization will vigorously enforce the deed restrictions, maintain the common facilities, and provide the needed services after all the property has been sold or leased and the developer has departed from the scene. RCAs help fulfill the developer's promise to protect and enhance property values in the community over the long term.

The community builder who utilizes RCAs also faces a fundamental dilemma: how much control should the developer retain, and for how long? On the one hand, developers need to control the association closely enough to guarantee that it enforces restrictions properly, maintains facilities, and provides services, especially until all the property is sold. This ensures that the sales team will be able to market the proper community image for the present and the future.

On the other hand, developers must soon turn over the association to the homeowners' control in order to give them a stake in the community, to increase purchaser satisfaction, and to establish a pattern of resident involvement that is critically necessary for the long-term effectiveness of the association's management. New RCAs are almost always established with formal procedures for transferring control from the developers to the property owners and residents.

The Rise of the Community Builders

When we think of the image of a "builder," we imagine someone who puts together a physical structure. The image of a "community builder" concerns the land patterns in which the structures are placed and the relationship of the structures to one another. A community builder designs, engineers, finances, develops, and sells an urban environment, using as the primary raw material rural, undeveloped land. In the parlance of the real estate industry, such

activity is called the platting and improvement of subdivisions.

As one land and housing developer stated in 1936, "Fundamentally, the subdivider is the manufacturer in the field of real estate practice."

The history of the last century in American real estate consists of three key trends: (1) the increasing growth in the average scale of development and the size of the land parcel; (2) the increasing sophistication in the scope and quality of the structural improvements to land and buildings; and (3) the increasing economic coordination and integration in the phases of the development process by the entrepreneurs.

In residential real estate development, of which RCAs are such a crucial component, the most important aspect of the history over the past century is the "creation of the modern residential subdivision." That an urban land subdivision could be considered "residential" during the initial platting stages was a very unusual concept in late 19th and early 20th Century America. Most urban land had previously been carved into building lots and sold for whatever uses the new owners intended. Subdividing land exclusively for residential purposes presupposed a level of planning and control that was certainly not the norm for American urbanization.

Planning and developing specifically for residential districts or neighborhoods was first utilized by large-scale developers in the case of high-income suburban communities. The technological and economic changes that made possible spatial separation of urban land uses were combined by the developers with substantial investment in landscaping and infrastructure improvements and legal use of deed restrictions to control and preserve a planned environment.

Creating residential subdivisions for builders and purchasers of expensive single-family houses represented the first phase of the modern transformation of urban land development by private real estate entrepreneurs. This phase, "changes at the high end," began in the 1830s and reached maturity during the 1920s. The second phase, "changes at the moderate end," completed the revolution in community building by the 1940s. In this phase, subdividers became full-fledged suburban housing developers, not only planning and improving large tracts of land, but building the houses on the lots and selling the completed package to the home buyer. Often, parks, schools, shopping centers, and other community facilities were also built.

What made the Levittown developments of the late 1940s so important was not just that the Levitts had found a way to mass produce affordable housing for home ownership, but that the housing was an attractive investment for young families precisely

because of the planning, construction, and long-term maintenance of a complete community. Even where smaller subdividers and home builders created only modest-sized neighborhoods, what the average consumer was purchasing or renting by the 1950s was a new dwelling in a new district of completed dwellings, rather than a vacant lot in an undeveloped area with an uncertain future. By the 1950s, automatic membership homeowner associations were beginning to play an increasingly important part in this process of community building, and they have expanded both in numbers and complexity in every decade since.

Residential developers who engaged in full-scale community building also performed the function of being private planners for American cities and towns. Working together with professional engineers, landscape architects, building architects, and other urban designers, these real estate developers worked out "on the ground" many of the concepts and forms that came to be accepted as good community planning.

Numerous physical and legal features were first introduced by private developers and later adopted as rules and principles by government agencies. Among those features were: the classification and design of major and minor streets, the superblock and cul-de-sac, planting strips and respect for rolling topography, arrangement of the house on the lot, lot size and shape, set-back lines and lot coverage restrictions, planned separation and relation of multiple uses such as commercial and institutional areas, ornamentation, easements, underground utilities, and design and placement of open space and recreational amenities (among them, parks, playgrounds, golf courses, swimming pools, tennis courts, lakes, country clubs, sports centers, schools, meeting centers, and biking and hiking trails).

Developers' desire to finance, develop, and maintain a wide range of common amenities that gave the community its distinctive character and long-term market value led them to establish RCAs. This phenomenon of "private innovation preceding public action" also applied to the provision of vital community services, which developers often initiated and implemented through homeowner associations, sometimes later turning to local government, other times continuing with private services.

One method by which community builders have implemented their planning and design vision, in addition to direct capital investment and administrative coordination of the investment, improvement, and sales process, is through the vehicle of legally enforceable deed restrictions (now called CC&Rs—conditions, covenants, and restrictions). These restrictions, written into a private contract between the original seller and buyer of a building lot, both mandate and prohibit certain types of behavior on the part of present and future property owners.

Deed restrictions, by virtue of being voluntary private contracts, often go far beyond the scope of public sector regulations. These restrictions, which might even include prohibiting a homeowner from repainting the house with a different color, constitute a very significant abridgment of private property rights. That they were willingly and in many cases eagerly accepted by home purchasers opened the way for the introduction and extension of public land-use controls. More importantly, it was the need for strict but flexible long-term enforcement of deed restrictions that provided part of the initial impetus for the creation of automatic membership homeowner associations.

The Five Historical Periods

In examining the history of RCAs, we have discovered five distinct periods:

Origins (1830-1910). During this period the modern community association did not really exist. Some subdivisions did have deed restrictions and attempted to enforce them, and some private property owners' neighborhood organizations did provide basic services and own and maintain common facilities, but no compulsory membership homeowner association was constituted through deed restrictions to perform all three of the basic functions of a community association.

Emergence (1910-1935). In the 1910s and especially the 1920s, the larger scale of high-income suburban subdivision development, and the increased demand for design amenities and sophisticated restrictions, created a greater need for developers to provide for the establishment of homeowner associations. At this time, these associations were generally not standardized and were relatively few in number.

Popularization (1935-1963). Community builders began standardizing homeowner associations, working primarily through the Community Builders' Council of the Urban Land Institute (ULI), and later through the National Association of Home Builders (NAHB). In the 1940s, the ULI strongly endorsed the use of homeowner associations by developers, and published a plan for standardized implementation. At the same time, the Federal Housing Administration (FHA) was strongly promoting the use of deed restrictions in community development, paving the way for homeowner associations as the long-term enforcement mechanism.

Expansion (1963-1973). The FHA and ULI worked together to promote the widespread use of community associations in planned unit developments (PUDs) and in residential condominiums. The latter were first introduced into the U.S. with FHA approval in 1961. During this period of rapid expansion, many of the community associations were

poorly organized, often by much smaller scale developers. This led to a good deal of resident dissatisfaction.

Restructuring (1973-1989). Developers recognized the growing difficulties with community associations, and organized to take action. In 1973, ULI and NAHB got together to support the formation of the Community Associations Institute (CAI). The purpose of CAI is to promote more effective management of residential community associations.

Since the mid-1970s, developers increasingly have utilized professional firms to work with the resident board members in managing community associations. In addition, many developers have been downsizing community associations—reducing basic amenities and offering more optional packages to cut the required fees and budgetary costs.

The FHA and the Veterans Administration (VA) played an important role in standardizing the implementation of community associations from the 1930s to the 1960s through their mortgage insurance and guarantee functions. Beginning in the late 1970s, two key secondary mortgage market institutions, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) have been very influential in the process of restructuring community association organization, financing, and management to conform to new implementation guidelines. Finally, in the past decade developers have been relinquishing more control of community associations to the property owners at earlier stages, as part of a phased process.

The unique contributions of each of these five historical periods to the development of RCAs are described in following sections of this paper.

Period One: Origins (1830-1910)

During the 19th century, urban land developers began changing from the subdividing of raw land to the more complex practices of subdivision development. This involved primarily the installation of improvements, and in some cases also the construction of houses. The higher income subdivisions experimented with extensive landscaping and amenities, as well as with deed restrictions concerning the development and uses of property. Most of the restrictions were for 5 to 15 years, not long enough to warrant the establishment of an association for enforcement. The main enforcement mechanism was for neighboring property owners with the same restrictions to sue violators in civil court.

There were several problems with this method of enforcing restrictions. First, it left enforcement to chance. If none of the property owners had the time, money, or initiative to sue, then the violation would

proceed unchallenged. Second, by the time a civil suit got to court the violations may have already done their damage. Reversing such trends might be difficult and costly—courts were hesitant to intervene in such situations and were more likely to declare the restrictions no longer applicable.

The general pattern in rapidly urbanizing areas was for low density residential subdivisions to become higher density residential or commercial-industrial neighborhoods within two decades. Most property owners anticipated such changes and did not expect deed restrictions to fix the character of the community for more than 10 or 15 years. People expected to move frequently to keep up with the latest fashions in houses and neighborhoods. The restrictions, though limited both in duration and effectiveness, were used in high-income subdivisions to help stabilize this process of change.

Basic services were sometimes provided by neighborhood improvement associations. These services were provided on an interim basis, to fill the gap between the initial development and incorporation or extension of infrastructure and services by local government. As such, these activities differed from the long-term private responsibilities of an automatic membership homeowner association, while still serving as a forerunner.

Another early precedent was the development of private streets in St. Louis and other cities. The maintenance of the streets and enforcement of restrictions were administered by perpetual trustees appointed by the developers, rather than by a resident-elected board under the community association model. Many of the private streets associations were in decline by 1910, and their popularity waned in the 20th Century. Most of the modern homeowner associations are organized in subdivisions with public streets.

Finally, there were some other early examples of private places and homeowner associations outside St. Louis. Two of the most notable were Gramercy Park in New York, which formed a homeowner association in 1831, and Louisburg Square in Boston, which formed an automatic membership homeowner association in 1844.

Period Two: Emergence (1910-1935)

During the 1910s and especially the 1920s, developers of increasing numbers of large and expensive suburban subdivisions began establishing more stringent and longer term deed restrictions that utilized homeowner associations for effective enforcement. Developers also created greater physical amenities and higher quality private services that required homeowner associations for administration and maintenance. These associations evolved on an experimental basis to accomplish the purposes of

enforcing restrictions, maintaining common property, and providing services to accommodate these newer forms and larger scale of residential subdivision developments.

Many technological and economic changes allowed greater spatial separation of land uses and enhanced stability for new neighborhoods. These changes were reflected in the increasing use of deed restrictions in subdivision development. By the 1920s, developers were placing restrictions on lots for an average duration of 33 years, more than double the average length of time from the pre-1910 period. Many of these newer restrictions contained renewal clauses, some by procedures for automatic renewal with the consent of most of the property owners. Blanket restrictions were written to "run with the land" covering the entire subdivision, so that lot owners could not individually refuse to renew the restrictions and then opt out of the system. Reinforcing these trends was a stronger judicial attitude favoring the enforcement of restrictions.

In most cases during this period, the formation of an RCA was not completely planned in advance, but evolved later. For example, the first homeowner association for the famous subdivision of Roland Park in Baltimore was formed in 1909, 18 years after the initial subdividing, development, and sales. Following this pattern, most of the early associations were established once the need to enforce restrictions, provide services, and maintain common facilities was fully recognized after the community was already partially developed and occupied.

By the 1920s many more of the deed restrictions included procedures for establishing an association, but not automatically. The developers and lot owners had to take some further actions later to initiate the formation of an association. One important exception was St. Francis Wood in San Francisco, which included in its 1912 deed restrictions a provision for an association to be created immediately.

In the 1920s some RCAs acquired additional power to collect mandatory assessments from property owners by gaining the legal authority to place a lien on the property in the event of nonpayment. This gave the association a stable source of funds with which to become more professionalized and effective in exercising its responsibilities. Most of the associations contracted with the developer for service provision and facility maintenance, establishing a tradition that has survived as an option for association management in the 1980s.

The Radburn (New Jersey) Citizens' Association, and the various homeowner associations of the Country Club District in Kansas City were among the most innovative during the 1920s and early 1930s, and served as models for the future growth of this institution. These associations were among the first

to offer extensive recreational services, setting a precedent that later became the standard for many of the larger subdivision developments. The managers of the Radburn association, and the J.C. Nichols Company that provided the management for the Country Club District associations, also worked out an organized and tactful administrative style that was more effective in enforcing deed restrictions on a daily basis than the earlier reliance on lawsuits.

An additional innovation of this period was the introduction by developers of design controls and art juries. The previous method of including minimum house construction costs in the deed restrictions was not sufficient to guarantee architectural quality. Also, architectural tastes in the 1920s came to emphasize uniformity, which required greater regulation than the previous vogue of eclecticism. This was particularly the case in California, where the Spanish-style "Mission Revival" became popular and symbolic of a different way of life than the fashions familiar to migrants from the eastern and midwestern United States.

Rather than utilizing homeowner associations directly as the enforcement mechanisms, developers established art juries to administer the new design controls written into the deed restrictions. The art juries were small committees appointed by the developers in the early stages and often by the homeowner associations at a later point. Generally, the art jury members were design professionals such as landscape architects, building architects, and civil engineers. The rationale for this approach was that such professionals had more credibility and legitimacy to make tough and controversial decisions and a more reliable commitment to and expert understanding of the fundamentals of good design. Thus, they were regarded as a more preferable enforcer than either the developers, who presumably would withdraw from such efforts after all the lots were sold, or the property owners and residents, who might not be well organized or represented at the crucial early stages and who were considered to be less sophisticated about design issues. Nevertheless, the homeowner associations funded the art juries from their assessments budgets, and therefore still played a key role in the regulation of community design standards.

Period Three: Popularization (1935-1963)

Beginning in 1935 the newly created Federal Housing Administration, through its mutual mortgage insurance program, its land planning division, and its property standards and neighborhood standards, helped spawn a reorganization and revival of the residential subdivision development and home building industry. Subdividers became home builders on an increasingly larger scale as FHA insurance made greater amounts of financing available for

developers and builders, as well as more affordable financing for prospective home buyers.

This became the era of the rise of the community builders on a grand scale. The purchaser was now buying a fully completed house in an entire community of newly built houses and basic facilities, services, and amenities. In this environment, it was necessary for developers to control and maintain long-term stability regarding the quality, uses, and values of the properties.

In the age of community building, deed restrictions and homeowner associations became increasingly important and widespread. Home buyers were now purchasing a more extensive product, and thus expected higher values in return. Homeowner associations were considered desirable protection for the home buyers' investment. Also, home buyers were now moving in right away to the completed new houses, so the quality of the surrounding community became of more immediate concern. RCAs were seen as necessary to protect and enhance these surroundings.

FHA policies encouraged large-scale development, new subdivisions limited to residents with similar socio-economic characteristics, and the use of common facilities such as parks and playgrounds. FHA also strongly promoted the use of comprehensive deed restrictions and insisted that they be vigorously enforced, recommending that art juries be formed to administer design controls. FHA's land planning consultants assisted developers in designing the physical layout of subdivisions as well as the deed restrictions. All of these policies suggested the use of RCAs, though FHA did not require subdivision developers to establish such associations as a condition for obtaining mortgage insurance commitments. The Veterans Administration, which launched its home mortgage guarantee program in 1944, generally followed FHA's leadership in formulating development standards.

The growing number of large-scale community builders became increasingly convinced of the importance of homeowner associations as an essential element of residential subdivision development. In 1944, the Urban Land Institute formed a Community Builders' Council with J.C. Nichols as its chairman. From the very beginning, the Community Builders' Council strongly favored RCAs (called homes associations) and formulated standard principles for their implementation. At its first national meeting in June 1944, the council focused on the benefits of establishing RCAs to aid developers in the provision of services, and decided to explore association issues further.

In 1945, J.C. Nichols elaborated on the role of homeowner associations in *Mistakes We Have Made in Community Development*, ULI's first technical bulletin.

The following year, ULI Assistant Director Max Wehrly wrote an article that spelled out basic principles for community builders with regard to homeowner associations. These included:

- 1) Provide for immediate establishment of a homeowner association in the deed restrictions (protective covenants), with company officials temporarily filling in as association directors until the resident directors are chosen.
- 2) Turn over control to the homeowners in an orderly manner and as quickly as possible, though not in the earliest stages.
- 3) Delegate design control to an art jury rather than to the homeowner association.
- 4) Establish recreational activities, including activities for children, as an important function of a homeowner association.

The basic approach outlined by Max Wehrly in 1946 was further reinforced by ULI's *Community Builders Handbook* published the following year. The ULI's solution to the developers' dilemma of retaining or relinquishing control of RCAs was to establish associations immediately and turn over control at an early stage, but to retain control over design review (through an art jury) at least until all the land had been sold.

The National Association of Home Builders was an organization formed in 1942 with a much larger and more diverse membership than ULI, ranging from huge community builders down to small individual house builders. NAHB adapted the ULI model of homeowner associations for "small operators." In 1950, NAHB published the *Home Builders Manual for Land Development*, essentially endorsing the ULI principles for the use of RCAs by developers, and encouraging smaller developers and builders to follow a variety of methods for establishing homeowner associations, despite difficulties due to their more modest scale of operations.

Period Four: Expansion (1963-1973)

The arrival of condominiums and planned unit developments (PUDs) during the 1960s marked a basic watershed in the history of RCAs. Both the condominium concept and the PUD concept required a community association to maintain the common areas. Consequently, as PUDs and condominiums became popular, the number of residential community associations nationwide jumped from fewer than 500 in 1962 to approximately 15,000 in 1973. The rapid spread of these new smaller scale forms of residential development shifted the basic purpose of RCAs during this decade. Associations increasingly stressed maintaining common property

and providing services, while enforcing deed restrictions became relatively less important.

PUDs and condominium developments burst onto the American housing scene in the 1960s because they presented the developer with lower per-unit costs and the ability to package recreational services and other amenities in sales of moderately priced homes. PUD site design lowered costs through more efficient layout of streets and utilities, and building only on the most suitable terrain. Through participation in community associations, residents could pool their resources to maintain green space as well as social and athletic facilities.

Thus, community associations in PUDs and condominium developments provided two basic advantages for the buyer: a “maintenance-free lifestyle” with numerous recreational opportunities, and a less expensive means of buying a home. Associations in these types of developments continued to enforce deed restrictions, but their essential purposes increasingly reflected two other priorities: the provision of attractive services and the economical maintenance of common property.

While developer organizations such as the ULI were indispensable in marketing the PUD and condominium concepts, the support of the federal government, especially the FHA, was also very important. In 1963 and 1964, FHA and ULI combined forces to publicize the PUD concept through two important documents, FHA’s *Planned Unit Development with a Homes Association* brochure, which became a best seller among developers, and ULI’s *Homes Association Handbook*, which circulated widely among urban planners. The close degree of FHA-ULI collaboration on these projects is illustrated by the fact that Byron Hanke, who headed land planning at FHA, was at the same time the principal author of ULI’s *Homes Association Handbook*.

The federal government also played a major role in the rise of condominiums. Section 234 of the *National Housing Act of 1961* authorized FHA to insure mortgages on condominiums, and FHA immediately devised model state enabling legislation to allow for condominium conversion and development. In the 1960s, both the FHA and the VA attempted to devise a method for standardizing the critical process of transferring control of RCAs from the developers to the owners of the residential units. In projects with FHA-insured and VA-guaranteed mortgages, the developers retained a triple vote until 75 percent of the units were sold, at which point the developers formally relinquished majority voting control of the community association.

However, since RCA board members typically served for staggered three-year terms, developers could stack the transition board with loyal supporters and thereby prolong their influence for several years

after the 75 percent transfer point. Furthermore, even if the individual unit owners did achieve actual majority control of the community association board, the transition was frequently anything but orderly. In many cases, developers had made little effort to train or even involve residents in community association governance prior to the transition period.

Since many developers were unfamiliar with the considerable complexities involved in managing the new PUD and condominium associations, a substantial number experienced major difficulties during the 1960s and early 1970s. A 1973 survey of 1,760 condominium residents found that RCAs had become a problem for the otherwise popular condominium concept. While a sizable majority of the respondents expressed satisfaction with their overall condominium experience, 61 percent rated their community association fair or poor.

Much of the difficulty during this period can be attributed to developer and resident unfamiliarity with PUD or condominium management, legal uncertainty in drafting association documents, and lack of appropriate state enabling legislation. Inexperience in RCA management was compounded in some cases by a lack of proper attention from developers. Particularly in many of the condominium and PUD townhouse projects, developers often delegated oversight of the newly created associations to junior staff, and neglected to keep necessary records, hold required meetings, or properly enforce rules and restrictions.

Period Five: Restructuring (1973-1989)

Since the mid-1970s, much of the growth in condominiums and PUDs has been in relatively small projects, often infill development in built-out neighborhoods. According to the 1988 edition of CAI’s *Community Associations Fact Book*, there were approximately 130,000 RCAs in 1985, of which 70,000 were condominium associations. One California study documented that the median size in number of units of new residential community associations developed during the past decade was less than half the size of residential projects with community associations developed prior to 1976.

Smaller projects increasingly include common property primarily to reduce costs rather than to promote a maintenance-free or recreational lifestyle. Thus, in many small projects, RCAs have been created primarily for the maintenance of common property and less for the provision of extensive recreational services or enforcing deed restrictions.

The groups whose interests are represented by associations are also changing. Developers creating associations increasingly are responding to local governments’ subdivision regulations rather than to the home buyers’ interests. Some of the original

market-driven rationale for community associations has been lost.

Developers of small PUD and condominium projects have been finding that local subdivision regulations through a variety of incentives either require or encourage them to create commonly owned property managed by community associations. In some cases, localities refuse to accept public dedication of private streets, open space, or other common areas within a private development.

Even when developers are not required to retain ownership of these facilities, in many cases they still decide to do so in order to decrease the unit costs of the development. A variety of facilities—most notably streets, but also utility line construction, storm drainage, sewers, and erosion control—all can be built less expensively if the developers elect to have them managed privately instead of constructing them according to public standards. The RCA is then created by the developers chiefly to own and maintain these private facilities, which cost less to develop initially, but may cost more to repair and maintain over the long term.

While smaller PUD and condominium projects have become more numerous, larger residential developments have remained important, and frequently have come to require two levels of community association management. An umbrella or master association maintains the property and facilities common to the entire development, and often negotiates the provision of services for the smaller associations representing each part of the development. The smaller associations oversee whatever structures or properties are common to their own section. Relations between the master associations and the smaller associations may vary considerably.

In some large projects, the master developer does not build the homes, but sells the improved land in wholesale parcels to builders. In these cases the RCA must develop relations not only with an original developer but also with the builder of its section.

Since the early 1970s, when there was considerable resident dissatisfaction with RCA performance, developers have attempted to improve association management, particularly on problem areas such as financial shortfalls, expensive infrastructure repair, and lack of communication with residents. Two basic approaches characterize the majority of developers' actions. First, developers have accelerated their earlier attempts to standardize and professionalize association management and to formulate a detailed, uniform model for the transfer of control to residents. Second, in large as well as small projects, many developers have reduced the provision of amenities through the RCAs, in order to lower development costs and mandatory association fees.

Over the last decade, efforts to standardize association management have come not only from developers and developer organizations, but also from the Community Associations Institute, the courts, state government legislation, and federal government agencies. In the midst of the condominium explosion, when widespread association problems were becoming a serious concern to many developers, the ULI and the NAHB jointly formed the Community Associations Institute in 1973 to help solve these difficulties. Since its inception, CAI has published pamphlets establishing guidelines for association management and finance, and clarifying the appropriate roles of developers, lenders, buyers, and local public officials. Partly at the urging of the CAI, many developers have been professionalizing association management since the mid-1970s, either through hiring full-time executive directors, or through contracting with outside management firms to perform certain functions, particularly maintenance activities.

While FHA and VA have remained important in the formation and management of some community associations, the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation have recently become very powerful in influencing RCA standards through their positions as secondary market purchasers of residential mortgages, particularly of the rapidly expanding number of privately insured mortgages. Fannie Mae and Freddie Mac have adopted a series of requirements for the proper organization of community associations that must be fulfilled before they will purchase mortgage loans made on residential properties that utilize community associations. This is further recognition that an association can significantly affect the long-run value of a development, and that appropriate actions can help ensure greater price stability in market demand.

In the last five to ten years, developers have been more conscientious about implementing phased transfers of control to owner-residents. The CAI provided leadership for developers beginning in the 1970s by drafting detailed step-by-step models for the transition of governance in community associations. Since the late 1970s, numerous states have passed legislation requiring phased transfers of control. Developers have also become increasingly eager to relinquish control earlier because recent court decisions have been holding association boards and managers legally liable for failing to budget adequately, collect assessments, or provide promised improvements.

In many cases developers now relinquish effective authority at 50 percent of sales, rather than waiting until the standard 75 percent benchmark.

The transfer of general control can be achieved earlier without creating great difficulties for developers, as long as they retain permanent control over certain key functions, such as design review of new construction and maintaining sales offices on the property.

In addition to standardizing association management, many developers have also been deemphasizing the provision of extensive recreational services through RCAs. This is true not just for smaller PUDs and condominium developments, but even for very large projects and communities. Developers have either been completely reducing amenity packages or making them voluntary through membership clubs that operate certain costly facilities and recreational services. This trend is an aspect of the broader recent changeover—downsizing community associations to emphasize simply the maintenance of basic common property and the provision of a modest amount of essential services.

Conclusion

The 150-year history of RCAs has been characterized by a long, slow evolution leading to a rapid explosion of association growth in the past 25 years. While much of the attention in the past two decades has been on small associations for condominium and townhouse projects, the longer tradition has been more involved with RCAs for large subdivisions of single-family houses.

Large-scale developers—community builders—have played a key role in establishing the concepts and principles for initiating and managing community associations in order to enhance the long-term quality and value of residential environments. Their early experimentation with this new form of private governance set the standard for the later spread of these innovative institutions in the American inter-governmental system.

Today, when community building is on such a massive scale that residential community associations have become a complicated form of representative governance with huge master associations coordinated with smaller neighborhood associations, large developers still have a key role to play in ensuring the future success of public-private residential policy and management, and in providing leadership and continuing to set high standards for the entire real estate development industry.

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