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The perils of 'Privatopia': Taking a 2nd look

Let's get one thing straight, from the top: Evan McKenzie doesn't think every homeowners association is a disaster waiting to happen.

"What's amazing to me is how well many associations are functioning," McKenzie said. "The truth is, the majority operate reasonably well, most of the time, which is amazing because most are run by volunteers."

But McKenzie is known for being anything but a fan of common interest developments, which is a catch-all term for condominiums, planned subdivisions and other types of community associations that include shared property ownership and that function, at least to some extent, as governing bodies for the residents.

McKenzie says they've grown in number and influence far beyond what he envisioned when he first studied them and wrote "Privatopia: Homeowner Associations and the Rise of Residential Private Government" in 1994.

Now, McKenzie, a professor of political science at the University of Illinois at Chicago and adjunct professor at John Marshall Law School, where he teaches a course on law related to common interest developments, has looked into what happened to these associations in the intervening years and has written "Beyond Privatopia: Rethinking Residential Private Government" (Urban Institute Press).

McKenzie discussed how common interest developments have become entrenched in society and how the recession has turned them into a potential threat, rather than a self-sustaining asset, to some communities:

Q: How did common interest developments arise, and how widespread are they now?

A: Although they've been around in some form since at least the mid-19th century, they took off with the recent homebuilding boom. As the cost of land went up, developers had to find a way to get more people on less land, to maximize density. They couldn't give everyone a yard with a swimming pool, but they could put in one swimming pool, though that would require common ownership.

By encouraging building this way, municipalities were getting a cash windfall — (in the big subdivisions) they might not have to build the infrastructure, but they got all these new taxpayers. Depending on the development, they didn't have to put in the streets, the parks, the recreation centers and swimming pools.

What I didn't see coming was how much the governments would embrace them. Some cities now insist that any redevelopment must be a common interest development. In 1964, there were fewer than 500 of these associations. In 1990, there were about 130,000, and now there are 305,000. Their population since 1990 has gone from about 30 million to 60 million. That's about 1 in 5 Americans.

Q: And now you're concerned about these associations' economic viability?

A: The (housing) boom is clearly over, and right now few of these associations are being created. The problem shifts to sustaining the ones we have. What was sustaining them was an endless rise in housing prices. People could always sell at a profit, and the association would get its money. Now we have foreclosures and people not paying their assessments for six months or a year, and associations aren't getting their assessments. The banks in foreclosures don't want to pay overdue assessments.

The individual owners who remain may be carrying the whole thing on their shoulders. Owners can't do this: They don't have the money, the time, the know-how.

It's presumed that monthly assessments will cover operating expenses, which can include things like trash collection, pool maintenance, even resurfacing the streets. But studies that have been done show they probably don't have enough money in reserve. At least a third of them … don't have half of what they should have. After the housing collapse and the foreclosures, it's probably more like half don't have enough. Many of them are having to go to the bank and get a loan, but if you have a high delinquency rate, you can't get a loan.

Q: Are there some solutions?

A: I realize governments don't have much money now, but there are certain things they should be doing unless they're willing to accept the costs of a lot of failed associations.

In some places, cities have declared eminent domain over places that have become severely dysfunctional.

Some condo buildings are going to have to be deprivatized, taken by eminent domain and supervised by a judge, and the local government would rent out the units as apartments. … In some places, private streets will become public streets, private parks become public. They'll have to break the covenants, in other words.

Q: Do you have any numbers on how many such associations are in dire financial straits?

A: No, and that's a problem. I'm starting a six-month sabbatical


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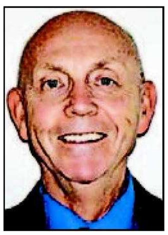
now to work on exactly that. Everything I get is anecdotal, and I want to get a quantitative handle on how bad the problem is.

Q: What do you tell people who are considering buying property in a common interest development?

A: I get asked that a lot. You have to pay attention to the finances and find out about the reserves. … In practically every state, you have the right to demand disclosure from the owners and the association before you buy. You have to be advised of pending or special assessments. Associations are supposed to get a reserve study done every three years by a professional, but a lot of them never do.

And you should try to find out if the association is involved in any litigation and about the delinquency rates on their assessments. Sometimes you find out things by doing a search of a subdivision's name in a local paper. Lawsuits may have made the news.

Sometimes this kind of information is hard to find, but you have to try. You might even knock on doors in the neighborhood and ask the residents what's going on, but that might not necessarily give you an informed opinion. Generally, people don't realize how much these associations do. They say, "They just take care of everything." Who is "they"? That would be you. They think it's a benevolent landlord running around. It isn't. It's you.



McKenzie

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There are more than 300,000 common interest associations, in which roughly 1 of every 5 Americans live.