

Rules for daily living

In condos and planned communities, strict codes dictate owners' rights and responsibilities

- [Deborah K. Rich, Special to The Chronicle](#)
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Purchasers of condominiums and homes in planned developments pay two prices, neither of them cheap. Along with a check, buyers also hand over many freedoms -- losing, for starters, the rights to leave their garage door open, choose the color of their patio furniture, hang their clothes on an outside line, select their yard design, pitch a tent for their children in that yard, decide the length of their television antenna, permit party guests to linger late or hang a basketball hoop in the driveway.

Covenants, conditions and restrictions (CC&Rs) generally dictate those and many other details of home life, along with a schedule of dues and assessments. In California, the list of dues and don'ts can run on for 50 or 60 pages. What buyers receive in return for deeding away freedoms formerly taken for granted depends upon the managerial capability of their homeowners association and who moves in next door.

Common-interest developments, including condominiums and housing subdivisions, allow a group of current and future neighboring property owners to enforce a standard of appearance and behavior upon each other -- call it intensive zoning -- and to own assets in common for the benefit of the development's residents.

Assets owned in common range from the elevators and exterior walls of a condominium, to roads and open spaces, to the shopping malls, pools and schools of "lifestyle" developments. Each development has a homeowners association, a legal entity that owns, insures and manages the common assets; owners of property in the development are the "shareholders" of the homeowners association and have the right to vote (one vote per property) on changes to the CC&Rs and to serve on committees and the board of directors.

The CC&Rs, usually drafted by the developer before breaking ground, vest the homeowners association with the power to enforce standards and to make managerial decisions. CC&Rs dictate how residents will maintain and use their individual properties and the common resources, outline procedures to address rule violations and authorize monthly dues as well as periodic assessments to finance projects. The more assets an association owns, and the more active a state's legislature is in overseeing homeowners associations, the lengthier the CC&Rs.

"In places that have common areas, that have resources jointly owned by a community, you have to have CC&Rs to govern how the commons are maintained, who pays the expenses, who has rights to use them," says Cathy Croshaw, an attorney with the firm Luce Forward, which helps developers draft CC&Rs. "The CC&Rs allow greater flexibility on the method of ownership of property. If you didn't have the ability to restrict property with CC&Rs, you probably could only

have single-family ownership housing or apartments; you wouldn't have the condominium option and the other development options."

By taking title to property within a development, buyers become bound by CC&Rs.

"Buyers must seriously ask themselves, are they comfortable going into business with their neighbors, and giving the neighbors contractual rights over their behavior and over their finances," says Brian Perkins. Perkins serves on the staff of Sen. Jackie Speier, D-Hillsborough, who has been active in increasing legislative oversight of homeowners associations.

"The homeowners association is a mutual benefit corporation, so there are rights and responsibilities that flow to each other under contract, and these are not things that are resolved democratically; they're resolved through contract, and sometimes contracts act in a pretty abrupt manner," says Perkins.

To illustrate the different approaches of contract law versus municipal code, Perkins offers the example of a homeowner who has let trash accumulate in his or her front yard. Under municipal code, even if the yard creates a clear public health and safety issue, a lengthy and public process must occur before the city or county can forcibly clean up the property: "citing the owner, working with the owner, often holding public meetings to discuss taking the homeowner to court."

A homeowners association, on the other hand, may only be required to send the property owner a notice of violation before the association is authorized, via the CC&Rs, to remove the trash and bill the homeowner for the clean-up. Until paid, the bill becomes a lien on the property.

The very power that CC&Rs grant to homeowners associations appeals to many homebuyers. A well-managed association patches potholes, picks up litter in the parks and polices the neighborhood. The association's ability to enforce neighborhood standards helps to keep home values high.

Residents of many developments enjoy access to recreational and educational resources that few non-associated neighborhoods can afford, especially in post-Proposition 13 California. And if the management of the association agrees that the neighbor is a nuisance, a homeowner doesn't have to rely upon hard stares or the coaxing of the city council to bring the neighbor to heel.

Even though they have bound themselves by contract to a set of rules above and beyond the dictates of civil code, many property owners feel they gain greater control of their destiny, and the destiny of their property, by joining a development, preferring to have the rules spelled out rather than subjecting themselves to the whims of neighbors (assuming the neighbors don't find fault with them) and municipalities.

"Although regulation of such matters can obviously be intrusive, the rapidly growing numbers of people choosing to live in a neighborhood association show that many people are willing to sacrifice elements of their personal autonomy for the resulting greater control over the actions of their neighbors," wrote Robert H. Nelson of the University of Maryland's School of Public

Affairs (July 2000, "Collective Private Ownership of American Housing: A Social Revolution in Local Governance").

Serving since 1992 as executive director of the Executive Council of Homeowners, a nonprofit organization whose members are homeowners associations, Oliver Burford suggests that developments are not for everyone. "There will always be some citizens who don't want to obey the rules, my-home-is-my-castle syndrome," Burford says. "They don't like being told, for example, that they can't park an old defunct car in their driveway."

While acknowledging the discontent of a "vocal minority," Burford believes that developments run by homeowners associations offer a valued housing and community alternative. "It's my opinion that 90 to 95 percent of the people who live in these communities that operate under CC&Rs are just happy as a lark with the community. They like not having to worry about mowing the grass, they like the uniformity rules that exist."

E-mail Deborah K. Rich at home@sfchronicle.com.