

Bright future for professionals behind the communal garden gate Homeowners groups in need of managers, lawyers

- Deborah K. Rich, Special to The Chronicle
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Looking for a surefire way to make money over the next 10 to 20 years? Try homeowner association litigation. Or if you don't cotton to going back to school and cramming for the bar exam, become a professional property manager instead. No degree or certificate necessary; a business card will get you in the door.

Both lawyers and property managers are certain to be in high demand as the number of Americans living in developments owned and managed by homeowners associations swells. In 1964, fewer than 500 such developments existed in the United States. By the end of last year, that number had increased to approximately 249,000 and accounted for 19.9 million housing units. The Community Associations Institute estimates that approximately 50 million Americans live in association-governed communities and that 4 in 5 housing starts in the past five to eight years have been built as part of an association. In California, association developments account for more than 80 percent of new home construction.

Developments owned and managed by homeowners associations are known as common interest developments. CIDs hold assets in common for the use of property owners in the development and provide various services to development residents. Assets can include staircases, streets and clubhouses, and services might include security guards, lawn mowing and snow removal. Condominiums, gated communities and subdivisions are familiar forms of CIDs, and all come with covenants, conditions and restrictions (CC&Rs) that govern use of both common and private property in the CID. Homeowners associations, in which membership is mandatory for all owners of property in the development, bear the responsibility for managing the CID's infrastructure and service contracts and for enforcing the CC&Rs (stay with me, here; tossing around acronyms will be a key job skill in your new career).

What makes life in CIDs particularly litigious is the fact that people who buy a home in a CID essentially pledge their private property as a guarantee of their good behavior (as defined by the CC&Rs and as interpreted by the association board). Homeowners associations have a contractual right to place liens on the properties and homes of residents to enforce compliance with the CC&Rs. It is this right that gives the associations their oomph.

You may have read about Richard and Ava Oulton in Henrico County, Va., who wanted to keep their flagpole despite its being deemed a "visual nuisance" by their homeowners association.

In January 2003, after exhausting every avenue of appeal, the Oultons were ordered to pay more than \$102,000 to cover the association's legal costs and to comply with the wishes of the association or be prepared to go to jail.

The behavior required by an association can catch homeowners by surprise. CIDs often rule away personal rights that city, state and national governments cannot; namely, our constitutional liberties.

"Homeowners associations, being private organizations, cannot violate the Constitution, no matter what they do. They can tell you to take down your Christmas decorations, your American flag, whatever," says Evan McKenzie, political science professor at the University of Illinois, Chicago, lawyer and author of "Privatopia: Homeowner Associations and the Rise of Residential Private Government" (Yale University Press, 1995).

"Since it is not state action, the Constitution does not protect you against it. The Bill of Rights only protects us against the actions of government. We do not have a First Amendment right against other individuals. Cities can't ban political signs, but your employer can." And so can your association, unless states pass laws prohibiting such a restriction from being included in CC&Rs.

"We're going to have a presidential election, and there's going to be plenty of neighborhoods where there won't be any signs," says McKenzie.

Not only do homeowners in associations face fines if they misbehave, but they also can be held personally liable if their association misbehaves. In the Simi Valley in Ventura County, the courts ruled that the 264 individual condominium owners in the Le Parc condominium development were personally liable for \$7 million awarded a contractor who sued their homeowners association for breach of contract and defamation.

Even when disputes don't go to court, homeowners and homeowners associations will need lawyers' assistance interpreting CC&Rs and the blossoming case law and legislation being crafted to limit the scope of the restrictions.

"Every year the Community Associations Institute has a law seminar," says McKenzie. "When they started almost 30 years ago, the handout they would give people on recent developments in association law was a little pamphlet. What they gave us last year was 900 pages of single-spaced, double-sided copy in a notebook five inches thick."

Finally, more and more associations will need legal support as they impose "special assessments" to overhaul aging clubrooms, park equipment and elevators. "Most of this stuff was built in the '80s and the '90s," says McKenzie. "A lot of it is starting to wear out. I'm talking about millions of units. Here in Chicago, there is a thriving business of trying to cobble together the money to finance major repairs because the associations do not have the money set aside in reserves. So they have to specially assess and borrow. It's very common for association members to be hit with \$10,000 special assessments here." Monthly dues are often set too low to sufficiently fund reserves earmarked for infrastructure development.

Lawyers aren't the only ones who benefit handsomely from homeowners associations. "Property manager" may not be the sexiest title, but most homeowners associations depend upon their managers even more than they do their lawyers.

Homeowners associations are run by a board of directors composed of elected volunteers from among the property owners. However, few homeowners, despite their volunteer spirit, have experience running a multifaceted operation, managing finances, negotiating contracts and

smoothing the ruffled feathers of feuding neighbors. Even fewer have time for a second job or have the commitment necessary to spend evenings checking whether the height of the Jones' new fence meets association code.

Enter the property manager stage left (this could be you).

Ideally, an association board/property manager relationship works like that of a city council and a city manager. Indeed, in 1928 the founders of the Radburn development in New Jersey (which became the prototype association development) intentionally set up the governance of the development to be a privatized version of city government.

"The governance of Radburn," says McKenzie, "was designed by some of the nation's most famous political scientists. They set it up with a city manager form of government, i.e., where you have an elected board of trustees or board of directors, and then one of those is a mayor who mainly presides over the meetings. Then you hire a professional manager, a city manager, to really run the place. In the case of homeowners associations, the idea was to have property managers, which most of the big ones have."

Not just anybody gets to be city manager. Being a city manager is a recognized profession with specific duties. International city manager organizations set standards for the profession. City managers usually have a master's degree in business and/or a degree in public administration.

So, too, do the good property managers, but they don't have to. California does not require that property managers be certified or licensed.

California law does, however, require that property managers disclose whether or not they have completed one of the voluntary certification programs offered by various property manager trade associations.

"Property managers are almost completely unregulated," says McKenzie. "Some managers are absolutely brilliant, people who have really trained themselves. They run the association like a Swiss watch, no problem at all. But you have no guarantee you're getting that unless you really check the managers out carefully. You could be getting someone who doesn't have any idea what they're doing."

Best of all for the legal and managerial professions, CIDs and CC&Rs are here to stay. Why? Because every day more of us want homes and because cash-strapped towns and cities can't afford to resist a developer who pitches a proposal in which the developer agrees to put in the infrastructure that the city itself used to have to install -- the sewage lines, the roads, the parks.

It's a win-win deal; the city gets to collect property tax from the new homeowners without having had to front the money for development, and the developer gets to pass on the cost for the infrastructure and its upkeep to the home buyers in the form of dues and special assessments.

And the home buyers? Well, the home buyers get a shiny new neighborhood. And the home buyers get the job of keeping it polished.

"People go to see a new development and say, 'Wow, isn't this beautiful,' " says McKenzie. "They say, 'We have a pool, we have this, we have that, and it's all clean and neat because someone is enforcing all the rules and nobody is going to put a trailer in their front yard. Isn't this wonderful?' And, yeah, it is. And guess what? You have to run it. And the other thing is, isn't it nice that your neighbor's house looks so clean and neat and orderly and uniform. And guess what, yours has to look the same way."

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