

Residential Community Associations

There has been relatively little research conducted on residential community associations (RCAs) by the academic community; however, RCAs deserve much greater attention because they are playing an even greater role in determining the outcome of state and local government decisions. In recent years, RCAs have emerged as one of the most potent political forces affecting local government land use decisions in the United States. Moreover, RCAs also have expanded their lobbying efforts at the state government level. Their primary goal has been to convince state legislators to adopt legislation to require local governments to provide RCA members with property tax rebates for local government services that they already have paid for and provided themselves. If successful in all 50 states, these efforts could require local governments to provide RCA members with property tax rebates in excess of \$5 billion annually.

As the number of RCAs in the United States continues to increase and as their lobbying efforts at both the state and local government levels continue to expand, interest in research concerning RCAs is certain to increase both in the academic community and among state and local government officials.

RCAs and What They Do

RCAs are nonprofit corporations created by real estate developers with local government approval. The three general types—homeowners' associations, condominium associations, and cooperatives—can exist by themselves or

Their Impact

On Local

Government

Finance and

Politics

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can be grouped together into what are referred to as master associations and master-planned communities.

Areas with homeowners' associations (HOAs) typically consist of detached houses or townhouses with common areas. The homeowners own and maintain their individual residences; the association owns and manages such commonly held property as swimming pools, tennis courts, and streets. Condominium associations (COAs) are usually located in multifamily, multistory buildings. The owners hold title to the interior space of their residences and own the rest of the property—hallways, elevators, exterior walls, parking lots, and so on—in common. The association manages the commonly owned property. Cooperative associations usually are located in multifamily, high-rise buildings in major metropolitan areas. The association's members do not own any real property. Instead, they acquire a long-term, renewable leasehold interest in their residence plus a share, or proportionate shares, in a corporation that owns the building and grounds. Approximately 51 percent of all RCAs are homeowners' associations, 42 percent are condominium associations, and 7 percent are cooperatives.

RCAs serve four basic functions. First, they provide homeowners with a governing mechanism to manage such commonly owned property as streets, parking lots, tennis courts, and swimming pools. Second, they provide such services as lawn care, street maintenance, trash collection, and snow removal. Third, they determine and collect assessment fees to pay for these services. Fourth, they create and enforce commonly held covenants, rules, and regulations (CR&Rs) that regulate the behavior of the development's residents. The CR&Rs can, among other things, determine whether and under what conditions a homeowner can own a dog or a cat, build an addition onto their home, run a business out of

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their home, or place a basketball hoop over the family garage.

RCAs also have a fifth function that is seldom, if ever, mentioned in their articles of incorporation: lobbying. Because local governments affect the welfare of RCA members through their taxing, zoning, and service delivery functions, RCA members often lobby their local government officials in an attempt to protect or promote their neighborhoods' interests. Recent surveys of RCA board members indicate that they regularly monitor local government decisions and attempt to establish personal relationships with leading local government officials. Often using what is referred to as the insider's lobbying strategy, they aim to establish a good working relationship with local government officials. This relationship, in turn, enables them to become aware of any proposals that may adversely affect their neighborhood early in the local government's decision-making process. It also provides them with an opportunity to marshal their resources to respond to any proposal well before it is enacted into law. Many RCAs also

have established committees that meet regularly with councilmembers and department heads to keep lines of communication open.

Potent Political Force

Recent surveys of RCA board members indicate that most RCAs have a good working relationship with their local government officials and are rarely involved in major political controversies. If the insider's lobbying strategy fails to resolve an issue to their satisfaction, however, RCA members are more than willing to turn to more aggressive forms of persuasion, such as marching on city hall and running advertisements in the local newspaper attacking local government officials who support actions perceived to harm a neighborhood's property values or aesthetics. A search of newspaper and journal accounts concerning RCA activities revealed that when RCAs do become involved in major political controversies, they are a potent political force. RCAs have been particularly successful in extracting concessions from developers seeking local government approval for projects located near or adjacent to the RCA. RCA members are clearly in the forefront of the NIMBY (Not In My Back Yard) movement in the United States.

RCAs are potent political forces because they have a number of organizational advantages that most other neighborhood groups lack. They have the capacity to raise significant amounts of revenue through regular and special assessments that can be used to hire professional lobbying assistance, including attorneys, engineers, and planners. They also already have, through their associations' newsletters, a communications network in place that can be used to mobilize neighborhood political action. Also, their members are used to gathering together to discuss their neighborhoods' welfare and have established procedures that help them

reach collective decisions.

There currently are more than 150,000 RCAs in the United States, and between 9,000 and 10,000 more are added each year. They range in size from three-unit condominiums and cooperatives to 19,000-unit master-planned communities such as Reston, Virginia. The typical RCA consists of between 40 and 100 units and has an annual operating budget of approximately \$125,000.

Although RCAs are particularly prevalent in Florida (40,000) and California (25,000), they are found in every state. They are especially popular in the nation's larger metropolitan areas, where they account for approximately 50 percent of all new home sales. Nationally, more than one out of every eight Americans (32 million) currently are governed by a residential community association, and, based on current growth rates, that number is expected to exceed 50 million by the year 2000.

RCA Issues

As the numbers of RCAs and RCA members continue to climb, state and local government officials increasingly are forced to address a number of issues involving RCAs. These issues generally fall within one of the following five categories: taxation, finances, service provision, citizenship and governance, and consumer protection.

Taxation. RCA members across the United States are becoming much more vocal in their demand for property tax relief. RCA members pay local property taxes at the same rate as other property owners in their town or city; however, they also pay assessment fees to provide such services as trash collection and snow removal, which their local government provides to other members of their community. Thus, RCA members often are taxed by local government

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RCA members have successfully lobbied for laws providing RCA members with a property tax rebate commensurate with the cost savings realized from the RCA's provision of services in Houston, Texas; Kansas City, Missouri; Montgomery County, Maryland; and New Jersey. In a case with national ramifications, the appellate division of the New Jersey State Superior Court recently dismissed a lawsuit by the New Jersey League of Municipalities that challenged the constitutionality of New Jersey's Municipal Service Law, which requires municipalities to reimburse RCAs for the cost of snow removal, street lighting, and collection of recyclable materials and garbage. Similar legislation currently is being discussed in Connecticut's and Virginia's state legislatures. In Florida, RCA members recently formed the Florida Legislative Alliance, and RCA members in California recently formed the California Legislative Al-

liance to push for similar legislation there. RCAs in Connecticut, Nevada, and New Hampshire also have formed legislative action committees. These groups are expected to press for state legislation to mandate RCA reimbursement for the provision of "public" services.

Given their difficult financial positions, most local governments have refused RCA requests for property tax rebates. As the number of RCA members nationwide continues to increase and the number of localities and states offering rebates increases, however, the issue of RCA property tax rebates is certain to become more common in state legislatures and in city and town halls across the nation. RCA property tax rebates also are likely to become an important political issue in local and state campaigns in the near future.

Members of single-family homeowners' associations have another tax equity problem. As members of a HOA, they pay property taxes on their commonly owned property; they also pay property taxes on their residences. In many communities, the local tax assessor reflects the added value of common facilities onto the value of the individual's home. As a result, HOA members often are assessed twice for living in a RCA; once when paying their share of their associations' property tax bills and a second time through higher appraisals on their homes. To promote tax equity, HOA members are becoming more vocal in their opposition to what is, in their view, a form of double taxation.

RCA Finances. Although relatively few RCAs have ever gone bankrupt, many have approached local governments asking for fiscal assistance, typically in the form of a low-interest loan, following such an unforeseen financial setback as a water-main break. Although local governments are not required to assist RCAs in the event of financial difficulties, most

have enacted ordinances that allow them to assume control temporarily of the RCA's operations if a financial emergency arises. Although local governments provide mechanisms to take over financially troubled RCAs, most do not regulate RCA finances in any way. Because local governments are potentially affected by RCA financial activities, some scholars have suggested that local governments require RCAs to report their financial status periodically to local government officials and to meet such financial tests as maintaining a specified amount in their reserve funds.

Service Provision. Many local governments refuse to provide RCA neighborhoods with services that they routinely provide to other neighborhoods within their jurisdictions. Local government officials argue that they exclude RCA neighborhoods because they subject themselves to liability problems when government employees venture onto RCA property. For example, many local governments will not allow their police officers to patrol RCA streets without specific, prior written agreements that release the local government from any liability actions. In addition to the liability issue, many smaller towns refuse to collect RCA neighborhood trash because the town often lacks the resources to purchase the special equipment necessary to empty large dumpsters.

RCA members across the United States have been lobbying their local governments for years to provide them with the same services offered in other neighborhoods. Their first major legislative victory occurred in New Jersey. In addition to requiring municipalities to reimburse RCAs for providing "public" services, the Municipal Services Law requires them to provide RCA neighborhoods with the same services offered in other neighborhoods, if the RCA does not

already provide the service itself. Bills introduced in Connecticut and Virginia contain similar mandates, and the coalition of RCAs in California, Florida, and Texas is expected to lobby for similar legislation in those states. Moreover, an ad-hoc group of RCAs in Naugatuck, Connecticut, recently filed a lawsuit claiming that Naugatuck's refusal to provide them with municipal services violated their constitutional rights under the equal protection clause. The case went to trial in 1993. The federal district court ruled against them, and they now are appealing the decision to

the federal district appeals court.

Although public finance statistics compiled by the federal government do not include estimates of how much money RCAs are spending on "public" services, the Community Association Institute, based in Alexandria, Virginia, has estimated that RCAs' current operating budgets exceed \$17 billion annually. Thus, the potential impact of legislation and lawsuits mandating local government reimbursement to RCAs for providing "public" services and mandating the provision of municipal services to RCA neighborhoods is significant.

Citizenship and Governance. Because the courts view RCAs as non-governmental entities, RCAs are not subject to the strict legal standards applied to government. For example, RCAs typically base suffrage rights on homeownership rather than residence. As a result, although renters residing in RCA-governed neighborhoods are directly affected by the RCAs decisions, most RCAs do not allow renters to vote at general membership meetings or to serve on an RCA's board of directors. Also, most HOAs give one vote to each lot owner, rather than to each adult resident in the HOA, and most condominium associations give a weighted vote to the owners of each condominium unit based either on the unit's market value or on its square footage. All of these voting mechanisms violate the principle of one-person-one-vote, first articulated in *Reynolds v. Sims* (1964), which applies to governmental entities.

Some scholars have suggested that because RCAs have many of the same responsibilities as local governments, they should be subjected to the same legal standards as are applied to governmental entities. There is little difference, they argue, between the actions of the RCA's board of directors and its president and the actions of city councils and mayors. They also point out that RCA general membership meetings have all the trappings of an old-fashioned town hall meeting, at which neighbors come together to discuss, sometimes rationally and sometimes irrationally, the future of their neighborhood. As a result, they argue that such constitutional requirements as the one-person-one-vote rule, or some variant of it, should be applied to RCAs.

Consumer Protection

Many homebuyers in RCA-governed neighborhoods do not understand the extent of their association's powers when they purchase their homes, nor

For Future Readings

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do they usually have a full or, in many cases, even a partial knowledge of the RCAs financial condition. Although most local governments require real estate developers to make full disclosure of the neighborhood's CR&Rs to prospective new homebuyers prior to closing, some local governments have not addressed the issue, and many more only require notification the first time a home is sold, not on subsequent resales. Some scholars suggest that all local governments should require notification of the RCA's CR&Rs and its financial condition to homebuyers prior to closing every time a home is sold. They point out that new homebuyers in RCA-governed communities should be alerted to any pending special assessments that may be necessary to renovate or repair neighborhood facilities.

California, New York, and Virginia currently require sellers of homes in RCA-governed neighborhoods to provide all potential purchasers with a public offering statement. This statement usually includes a copy of the RCA's bylaws and CR&Rs, as well as a summary of the RCA's financial condition and current assessment fees. The buyers then have a cooling-off period during which they have an opportunity to review the material and rescind their purchase agreements. California also requires its RCAs to conduct a reserve study that estimates the useful life of relevant common facilities and to include the studies in their public offering statements.

Conclusion

Because RCAs are private organizations, they are not regarded as full partners in the intergovernmental system of governance in the United States. Their increasing numbers and interactions with state and local governments, however, make them important actors in that system. For millions of Americans, their RCA is a

decision-making institution that is as important to them as their local government, if not more so.

In the short term, RCA demands for property tax reimbursements and for the provision of municipal services are likely to create a confrontational atmosphere. Given the budgetary implications of reimbursing RCAs for providing "public" services and of providing municipal services to them, RCAs are quickly learning that the insider's lobbying strategy is not likely to produce the results they desire on these issues. Marches on city hall, negative political advertising, and appeals to the state legislature or the courts are likely to become the rule, not the exception, over the next several years.

RCAs provide neighborhoods an opportunity to come together and voice their concerns and desires to elected officials as a group. As such, RCAs hold the potential to represent a major advance in the continuing effort to enhance communication between citizens and their elected government officials. **END**

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