

Boss Thy Neighbor

Homeowner associations are an increasingly prevalent — and troubled — form of local government

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With its finely landscaped and opulent master-planned communities, Southern Nevada may seem like the epitome of the easy-going life. But if you tune into KLAV radio on Tuesday afternoons, you'll come away with a sense that there is trouble in paradise.

"You can come to Nevada to drink and gamble, but don't even think about buying a home here," warns Bobbie Feldman, an announcer for the "Homeowners' Voice." She says homeowner associations — private corporations with government-like powers — are trampling individual liberties with invasive regulations and iron-fisted enforcement. Amidst calls for a boycott on home-buying in Nevada, the program fades to its country-western theme song,

"The Silver Bullet:"

Those petty rules and regulations,
It's enough to make you cry.
No statues, ponds or Christmas trees,
And no one knows just why.
Slick managers and lawyers
Slither close but they won't tell.
If your condo's in Las Vegas,
You've bought a one-way ticket to hell.

Feldman and co-host Phil Testa are part of a backlash against a 40-year experiment in neighborhood government. Their organization, Justice for Home and Condo Owners, has counterparts in about a dozen states — mostly in the Sun Belt, where new homes and homeowner associations are emerging at a rapid pace but where traditional beliefs in property rights and personal liberties are fervently held, too. Although advocates of association living dismiss these renegades as a fringe band of malcontents, state and local officials would be wise to take heed: The battle in America's neighborhoods raises important questions about the role of government and the challenges cities face creating healthy communities in a nation where new subdivisions spring up almost overnight.

The campaign against homeowner associations faces a powerful array of interests. Many developers see associations as a tool for maintaining parks, swimming pools, clubhouses and other amenities that increase property values. Many homebuyers see them as protection from obnoxious neighbors who let their property deteriorate, paint their homes offensive colors or keep rusty old cars on blocks in the front yard. And city

officials across the country compel builders to set them up in an effort to make new developments pay more of their own way.

As a result, the number of associations has soared from just 10,000 in 1970 to 230,000 today. The number of housing units — condominiums, cooperatives, townhouses and detached homes — in associations has almost doubled since 1990 to more than 20 million. Each year, around 8,000 more households become part of associations, meaning they pay dues as well as taxes, elect directors as well as city council members, and are subject to “covenant, conditions and restrictions” as well as city codes and ordinances defining what they can and can’t do with their property.

If controversy over homeowner associations proves anything, though, it’s that clubhouses and rules alone don’t turn a neighborhood into a true community. Critics say the emphasis on restrictions drives neighbors apart, and that government this close to the people increases conflict and makes impartial decision-making all but impossible. “The very existence of a homeowner association tends to polarize a community,” says Shu Bartholomew, host of “On the Commons,” a Fairfax County, Virginia, radio talk show dealing with association issues. “You can’t get an unbiased judgment because everybody has a vested interest in the outcome of every dispute.”

That’s certainly turned out to be the case in Nevada. A state ombudsman, appointed to help reduce tensions, receives 1,000 calls a month, mostly from homeowners who complain about rules and draconian penalties that make federal and state governments look like hotbeds of libertarianism. An elderly gentleman is fined for leaving his lawn half-mowed while seeking a brief respite from the desert sun. An association board decrees that children can’t play on the grass in front of their homes. Another association forecloses on a woman’s \$170,000 house because she refuses to pay \$1,800 in dues in a dispute over parking tickets.

It isn’t happening just in the Silver State, either. And while the bickering often seems petty, the stakes can get high: In Harris County, Texas, an activist says, homeowner associations have foreclosed on more than 4,000 property owners since 1995 — many for minor infractions. Moreover, dissidents complain that directors in an unknown number of associations steer lucrative contracts to friends or relatives, give themselves or their friends preferential access to community facilities, and stifle democratic participation by withholding access to records, closing their meetings and denying homeowners the right to vote by secret ballot.

Even some former proponents of associations say the system isn’t working. “In the beginning, when we wanted to provide a common amenity, we thought homeowner associations would be a good mechanism, but what we have created is a forum for people to fight with one another,” says Robert Lewis, president of Lewis Homes Management Corp.’s Nevada division, a major developer operating in several Southwestern states. According to Lewis, people who would be most qualified to lead associations often don’t want to spend their free time mediating disputes between neighbors. That leaves the job to people who don’t make good leaders. In many associations, Lewis says, “people just want to serve if they can control their neighbors.”

Advocates of association-living brush aside such complaints. Dissenters are a “vocal minority with personal agendas,” suggests Frank Pancratz, vice president of the Del Webb Corp., a leading builder throughout the Southwest. He argues that associations give neighborhoods aesthetic purity, high property values, recreational facilities and grassroots democracy, too. “We’re allowing residents, rather than elected officials and parties from the greater community, to determine what kinds of services they are going to have, what kind of structures and what level of maintenance,” Pancratz says.

If associations seem heavy-handed, he thinks it may be because they are more vulnerable to dissent than traditional governments. “In the city at large, you also can see a vocal minority at work with their personal agendas, but they’re operating in a large environment,” Pancratz notes. “Homeowner associations aren’t as big, so the vocal minority sometimes are able to exert more influence or more disturbance.”

Still, even staunch advocates of homeowner associations concede that privatized neighborhood government has its problems. In 1998, the Community Associations Institute, which serves as a champion for the homeowner-association system, published “Be Reasonable,” a book designed to encourage associations to stop micromanaging the lives of homeowners. “It’s time for associations to write responsible rules and review existing regulations,” the book said. “To eliminate restrictions that are outdated and illogical, and to address specific problems with clear, specific solutions. To realize that overzealous, unreasonable boards of directors can be more damaging to property owners than the violations they so vigorously try to prevent.”

Wayne Hyatt, an Atlanta attorney and leader in the community-association movement, says the “command-and control” mentality among associations is giving way to an emphasis on “empowerment and community-building.” Instead of focusing on rigid rules and unbending enforcement, he says, associations today are putting more emphasis on volunteer activities, homework clubs, babysitting coops, and community-wide sports and social events. Some associations employ “community extension agents” to help build community life, mediate disputes and promote events and sports leagues. “You shouldn’t generalize that there is a national problem based on the most inflammatory rhetoric and examples that come from pockets of intensity,” Hyatt insists.

By his own admission, however, the pockets of intensity include a pretty large swath of the nation, including Texas and California. What’s more, it’s unclear how deeply Hyatt’s ideas have penetrated the rank and file. The CAI tries to teach community-building ideas to association managers, but its course offerings are modest: It covers association governance in a two-day class, for instance, and deals with community leadership in just a day and a half. Overall, just 11,000 people have earned the institute’s highest degree, the PCAM (for Professional Community Association Manager), in an industry that consists of 230,000 associations. “It’s a low percentage,” concedes CAI President Barbara Byrd Keenan. “We’d like to have greater market penetration for this program.”

If it weren’t worrisome, the lack of professionalism in the industry might be funny. Last year, the Vegas’ Canyon Gate community asked its security force to do something about people who put their trash out earlier than allowed under the neighborhood’s rules. The officers sprang into action, slapping more than a hundred households with

finances in a matter of days. But many offending property owners never learned about their infractions: The guards attached their summons to the offending trash bags, which were whisked away before anybody noticed them. That seemed to confirm the suspicions of many homeowners, who earlier had rejected a proposal to allow the guards to carry guns.

Homeowners' pocketbooks, as well as their peace of mind, may be at risk in some associations. Nationwide, associations collect around \$34 billion in dues each year to manage billions of dollars in communal assets — everything from the walls and roofs of condominiums and townhouses to streets, sidewalks, swimming pools, playgrounds, parks, clubhouses, roads and more. But Robert Nordlund, a California-based specialist on association finance, estimates that one-third of all associations are financially weak, meaning they have set aside reserves adequate to fund no more than 30 percent of their capital needs. Another 50 percent are marginally funded, and only 20 percent are fully funded.

“Half of the people in associations have no idea what they’re doing,” says Nordlund. He predicts it will take “another generation” before community association boards and homebuyers learn the financial ins and outs of this new form of organization.

If the association world can't raise its own standards, states may decide to step in. Responding to calls from aggrieved homeowners and trying to reform state laws covering associations has become almost a full-time occupation for part-time state Senator Mike Schneider of Nevada. A Democrat whose district includes parts of Las Vegas, Schneider has won legislative approval for bills making it easier for homeowners to initiate special meetings, limiting the power of boards to hold executive sessions, capping fines and prohibiting foreclosure on homeowners who fail to pay fines. After learning a few years back that boards routinely were denying members the right to vote by secret ballot — some were sending homeowners proxies rather than letting them elect their leaders directly — he sponsored legislation that required associations to conduct elections by secret, written ballot.

Because many people don't understand what they are getting into when they buy homes in association-run neighborhoods, lawmakers also created a simplified disclosure statement informing prospective homebuyers of the implications of association living. To address financial concerns, they ordered associations to conduct periodic studies into the adequacy of their reserves. And they required a majority vote of homeowners before their associations can initiate lawsuits — a step designed to reduce what Schneider believes is the undue influence of attorneys over many association boards.

State regulation has had mixed success, however. According to Schneider, many boards and their lawyers are hell-bent on finding loopholes. And the new position of state ombudsman, which was established to iron out difficulties between associations and homeowners, has been a flop. Appointed in 1998, the ombudsman didn't receive funds to hire staff until July 2000, and she was fired at the beginning of this year. Schneider says the state named the wrong person to the job, but others argue that a

coalition of association boards, lawyers and vendors successfully lobbied to ensure that she had no power to take action against runaway associations.

“Boards are still in denial that they can’t do whatever they want to do,” says Schneider. “Managers are overworked, underpaid and haven’t taken the time to learn the law. Attorneys just want to collect fees — they have no interest in making things go smoothly. And the ombudsman was weak.”

Another approach to straightening out neighborhood affairs, some suggest, is to let city governments do it. They are closer to the people than state government, yet perhaps remote enough to avoid the personal rancor that characterizes so much of neighborhood government. Don’t hold your breath, however: Cities aren’t interested. “We’re tapped out,” says James Gibson, mayor of Henderson, Nevada. “We don’t care to displace homeowner associations — we don’t want their money, and we don’t want their jobs.”

Henderson clearly has problems of its own. In the past decade, its population has tripled, from 67,000 to almost 200,000, making it the fastest-growing city in America. Local leaders such as Gibson pride themselves on making growth pay for itself. Henderson requires developers to pay for fire stations, parks and other public amenities, for instance, and it forces them to put in landscaping around new neighborhoods and create homeowner associations to maintain it.

Although Gibson can boast that Henderson has the lowest taxes in the Las Vegas valley, voters aren’t eager to foot the bill for a higher level of city services. Last year, they rejected a bond issue to raise funds for more police. The city currently has about one officer for every 1,000 residents, a figure that seemed adequate when Henderson was a quiet bedroom community but is well below the norm for cities with the kind of bustling commercial areas that have sprung up in Henderson. The national average is 2.5 officers per 1,000 residents; the failed bond issue would have paid for 1.5 officers per 1,000 residents.

Only one organized interest group is actively working to return homeowner-association responsibilities to city government. Members of the Southern Nevada Homebuilders Association would like cities to require them to build fewer neighborhood amenities and, hence, to avoid creating homeowner associations in the first place. “Right now, we’re compelled to create amenities that the majority of homeowners don’t want,” complains Robert Plaster, president of Signature homes, a major developer in Henderson. Plaster estimates that only about 20 percent of his customers want to pay developers for swimming pools and other “active,” recreational amenities.

Developers have an ulterior motive, though: In recent years, many have gotten burned by a spate of construction-defect lawsuits initiated by homeowner associations. Senator Schneider believes many of these cases were illegitimate, foisted on associations by attorneys. Nevertheless, the chances that developers will join forces en masse with unhappy homeowners to seek policy changes reining in associations are extremely slim. As a result, city officials seem to feel little pressure to rethink their commitment to private, neighborhood governments.

Gibson is convinced that government couldn't do as good a job at the neighborhood level as homeowner associations anyway. That's certainly true if you measure performance according to cost. Unlike the city, homeowner associations can tap a substantial pool of volunteer labor, the mayor notes. While some of that labor is spent aggressively policing private homeowners, some is put to more constructive use, including fixing parks, maintaining landscaping, and providing a range of services.

If you measure performance by customer satisfaction, however, the advantages of homeowner associations over city government appear to diminish. While it's common for homeowner associations to issue harsh letters or even impose fines at the first sign their codes are being violated, city code enforcers generally take a more measured approach. When officials learn about an infraction, they contact a violator in person, instead of in writing. Rather than immediately issuing a fine, they try to resolve problems informally. And even if a case drags on until the day a violator is scheduled to go before a judge, the city is willing to talk compromise. "Our goal is to get compliance, not to be punitive," says Michael Bouse, Henderson's director of building and safety.

This greater level of tolerance extends to many other areas as well. Some neighborhood associations, for instance, ban or restrict basketball hoops; the city sees no problem. Some have a policy of zero tolerance toward any infractions; Henderson, which has just two code-enforcement inspectors to cover the entire city, acts only when it receives a complaint. And while some associations fine members for using the wrong color paint or having grass that isn't green enough, city inspectors couldn't care less about aesthetics. "We don't have a 'pretty code' or an 'ugly code,'" says Dan Parrott, the city's senior code-enforcement officer.

That, of course, leaves many local residents dissatisfied. Some think the city is too slow to enforce its code. Others think the code itself is too lax. At the same time, however, Parrott notes that his office frequently gets calls from people whose neighborhood associations have fallen apart. "The beg us to come in and enforce their [codes and restrictions] for them," he says.

As long as taxpayers are united in their resistance to higher taxes, none of these groups will be satisfied. And so, for the moment, it appears the number of Americans living in homeowner associations is likely to keep growing. Critics such as Bobbie Feldman and Phil Testa, the Las Vegas valley talk-show hosts and self-proclaimed "Voice of the Homeowner," see little hope they'll get relief from city governments, and they expect only modest reforms, at most, from state government. Their call for a boycott on home-buying in Nevada is a measure both of their despair at working from within the political system and their conclusion that nothing will change until market forces shift — that is, until homebuyers start telling both developers and policy makers that they don't want to live in neighborhoods run by associations.

But what DO homeowners want? The city of Henderson, while determined not to become a forum for neighbor-to-neighbor disputes, believes it needs to get a better sense of the answer to that question. This year, it created a new Office of Neighborhood Services to build better lines of communication between city government and

neighborhoods. The office is still working to define what that entails, but code enforcer Parrott knows what he would like to see. Right now, he notes, many of Henderson's neighborhoods are so new that they lack the bonds of friendship and personal relationships that tie people together and help them forge a common destiny. In short, they lack that elusive thing called community.

Parrott isn't sure how to create it, whether with block parties, hayrides, sports events, or what. But he knows Henderson needs it. "If neighbors just knew each other better, they'd get along," he says. "And if they get along, they wouldn't complain so much about each other."