

Gated Communities and Homeowner Associations

by [Evan McKenzie](#)

Political Science Department, University of Illinois at Chicago

Homeowner associations, as I use the term, refers to the private governments set up by real estate developers to run common interest housing projects (CIDs), including planned unit developments of single family homes (PUDs), townhouses, and condominiums. Some people refer to all privately governed CIDs as “gated communities,” others use terms like “residential private government,” “homeowner association,” “private community,” and so forth. No matter what they are called, we are speaking of places with:

--common ownership of real property,

--interlocking sets of deed restrictions that limit the activities of residents in many ways,

--a mandatory-membership homeowner or condominium association, and a

--board of directors that serves as a private government.

Increasingly these developments also feature various **private security features** along with more routine amenities like swimming pools, golf courses, parks, and private streets. These associations also often provide many of the services that have historically been the province of local government—trash collection, street maintenance and lighting, security, snow and leaf removal, etc.

There are an estimated 250,000 CIDs in the nation, housing as many as 50 million people. This is by far the fastest growing segment of the housing industry. In fact, in many rapidly growing parts of the country it is practically impossible to find affordable new housing that is not run by a homeowner association.

I have been writing about homeowner associations since 1985. My book on the subject, *Privatopia: Homeowner Associations and the Rise of Residential Private Government* was published by Yale University Press (link below) in 1994 in hard cover and 1996 in paper and was recently published in Japanese, with the Italian language edition expected soon. Links to a number of my articles on HOAs are below.

I believe that the rise of homeowner associations is the most dramatic privatization of local government services that has ever happened in the nation's history. Yet, it has hardly been studied, and it has happened with practically no public discussion until recently, much less formulation of any coherent public policy to address the needs of CID homeowners and volunteer directors or the interests of the public at large.

A. Gated Communities--During the 1990s, it became increasingly common for these CIDs to use various security measures such as:

- *Entry control*: gates, guards, traffic barriers, key cards, etc.
- *Perimeter security*: walls, fences, motion sensors, natural barriers such as water.
- *Internal surveillance*: roving police patrols, video surveillance, alarm systems, and so forth.

All these measures constitute the "gated communities" phenomenon...coming soon to a development near you. While I do not support intrusive government regulation of CIDs, I believe there are two areas where public policy could improve their functioning. I call these areas "micropolitics" and "macropolitics."

B. Micropolitics--This refers to the internal workings of homeowner associations as private governments. They tax and spend a tremendous amount of money every year and make decisions affecting the way owners can live in their homes. Currently the activities of HOAs are not restricted by the need to comply with the Bill of Rights, because the law does not view them as governments--despite the fact that they do most of the things local governments do. But in the Twin Rivers litigation (see below) I am involved in a case that would extend state (not federal) constitutional rights to some New Jersey HOA residents.

1. See my article on [Reinventing Common Interest Developments](#) that was published in the Winter 1998 issue of *The John Marshall Law Review* (the legal cite is 31 John Marshall L.R. 397). It is in .pdf format.

2. And, from the American Homeowners Resource Center website, read an edited version of the complaint in the case of [Committee for a Better Twin Rivers v. Twin Rivers Homeowners Association](#). This case was filed by the American Civil Liberties Union in 2001, with Professor Frank Askin of the Rutgers University Law School representing the plaintiff. I am the plaintiff's expert witness. The case seeks to establish constitutional rights, under the New Jersey state constitution, for residents of a large, city-like HOA in New Jersey.

C. Macropolitics--This term refers to the relationship between homeowner associations and the larger community and society of which they are a part.

1. For a discussion of this set of issues, see my article on [Homeowner Associations and California Politics](#) that was published in the September, 1998, issue of *Urban Affairs Review*.

2. I have another article that was published in *Housing Policy Debate*, in Vol. 14, Issues 1 and 2 (2003) on [Common Interest Housing in the Communities of Tomorrow](#). This article deals with how I see HOAs fitting into the urban fabric in the years to come.

3. And I recently presented a paper on gated communities at a conference on "Gated Communities: Building Division or Safer Communities?" at the University of Glasgow. You can read that paper in .pdf form as well. It is called, [Private Gated Communities in the American Urban Fabric: Emerging Trends in their Production, Practices, and Regulation](#). This will eventually appear as an article in the journal *Housing Studies*, is a special issue on private gated communities.

The other papers from the Glasgow conference are described and linked at the web site of the [Centre for Neighbourhood Research](#).