

Homeowner Boards Blur Line of Who Rules Roost

By MOTOKO RICH NEW YORK TIMES July 27, 2003

PHOENIX ? Joseph Haggerty may own the most expensive garbage can in America.

Because he kept it in the front yard, not the back, his homeowners association took him to court for violating community rules. After a four-year standoff over whether neighbors could see it behind a shrub, he lost and was ordered to pay \$11,978.75 in fines and legal fees.

For Ralph Blevins, the problem was an unsightly toolshed behind his town house in Raleigh, N.C. His homeowners association removed the shed one night, and Mr. Blevins, a 62-year-old civil engineer, protested by withholding \$750 in maintenance fees. The association foreclosed and bought the town house at an auction for just \$3,000.

About one in six people in the nation, or roughly 50 million residents, lives in a community governed by a homeowners association, from co-op buildings in New York City to suburban subdivisions. Formed to take care of the small tasks that fall through the cracks of municipal government, like picking up garbage and repainting curbs, some homeowners associations are asserting far broader powers, backed by local courts.

Cities and counties, which are reluctant to raise taxes to pay for services, have in many cases stepped aside, allowing associations to become de facto governments with increasing authority over daily life.

The growth of associations has created "a whole sector of people who don't use public services," said Evan McKenzie, a professor of political science at the University of Illinois in Chicago who has written widely about the subject. Homeowners who live in such communities, he added, "don't need local governments."

Homeowners associations collect dues, which finance a variety of things, including landscaping and playgrounds. The boards, composed of elected volunteers, dictate house paint colors, lawn-mowing schedules and parking policies for recreational vehicles. The boards can fine residents who break these rules and, in some cases, foreclose on homeowners who cannot afford the monthly dues.

While many homeowners say the codes preserve neighborhood harmony and property values, a growing and vocal group of opponents say the way association rules are enforced is actually tearing apart communities. "Homeowners associations are based on a negative attitude that you can't trust your own neighbor," said George Staropoli, a business broker in Phoenix who founded Citizens Against Private Government H.O.A.'s two years ago.

Grass-roots networks of critics, linked by the Internet, have formed to lobby state legislatures. Lawmakers in Arizona, California and Texas have proposed measures restricting the powers of homeowners associations to foreclose without due process.

About 20 million homes, of 106 million in the country, are governed by an association. That is a 21 percent increase since 1998, according to the Community Associations Institute in Alexandria, Va., whose members include homeowners associations, property managers and lawyers.

Part of the growth has been fueled by builders who lure buyers with amenities like pools, golf courses and recreation centers, and then ? when the builders move on ? shift the costs of maintaining those perks to a homeowners association. The associations are usually created by the developer, and a buyer signs a contract agreeing to abide by the rules.

Cities and counties generally support ? and sometimes require ? the associations because they often pick up the costs of building public parks and roads. In Phoenix, an estimated 85 percent of new homes are built in communities governed by homeowners associations. Gilbert, Ariz., about 25 miles east of Phoenix and the fastest-growing city in the country last year, according to the census, issues building permits only to developers who build within an association.

In a 1999 Gallup poll commissioned by the Community Associations Institute, 75 percent of respondents said they were "very or extremely satisfied" with their associations. "People are moving to communities like that because they are looking to create a lifestyle for themselves," said Paul D. Gruzca, president-elect of the institute.

But only 40 percent of those surveyed said they would buy their next home in a community governed by an association.

Critics say that the boards, while elected, have few checks and balances, and often act in secret. They "are made up of good old boys who just want to go into a backroom and decide what's best for everybody," said Bob Finn, a retired judge from Nebraska who won a spot on the board at Sun City West, a resort community in Phoenix, by campaigning for open government.

"People have egos, and they get into power positions and they can fine you for not trimming your bushes," Mr. Finn said. In a recreation center, he added, "if you speak unkindly to a clerk they can deny you your privileges to use your facilities. The only way you can change that is by electing new board members."

For a homeowner with a serious complaint about the board, there is no third party to mediate other than the courts, an alternative that few can afford. With the courts as a first and last resort, a squabble easily escalates into a neighborhood battle.

The Great Trash Can War began in 1998, when Mr. Haggerty ? who is now 37 and a father of three ? refused to put his green plastic garbage can where the rules in his 82-house community require it: in the backyard. He partly concealed it behind a shrub but the board said the can could still be seen from neighboring properties. Mr. Haggerty refused to pay a \$50 fine, and after the homeowners association obtained the nearly \$12,000 court judgment, the board garnished the bank account of his pizzeria. A judge ruled that the association had acted improperly when it took money from a business account and ordered the board to return the money to Mr. Haggerty, but by that time he had been compelled to close his business. "You don't realize how much power they have until you are in court," he said.

In his quiet subdivision of pale stucco homes, Mr. Haggerty's sympathizers portray him as the victim of a power-hungry board and its lawyers. But board members and their supporters said he brought it on himself by stubbornly flouting association rules.

"He was basically thumbing his nose at the whole neighborhood," said Steven Miyoshi, a board member.

Nevertheless, Mr. Haggerty wore his neighbors down. The can remains in the front yard. Board members "wanted to avoid arguing anymore," said the current board president, Sherry Fong.

Tensions between homeowners and their associations have increased as these communities have proliferated, attracting an increasingly diverse population. Many newcomers join a community run by an association without fully understanding what they are getting into.

"Most people are just looking for a house," said Professor McKenzie. "They want dominion over their property and suddenly they discover that their neighbors can tell them when they can fly the flag or when they can put up holiday lights or that they can't park their car in their own driveway."

The biggest complaint stems from the association boards' ability to evict residents ? in some cases for bad behavior, but more often for not paying dues.

No national figures on association foreclosures are available. But analysis of court records in the Houston area by homeowners identified more than 15,500 filings between 1985 and 2001 that could have led to foreclosure, according to their Web site, www.HOData.org.

Sentinel Fair Housing Corporation, a nonprofit group in Oakland, Calif., found that in 2001, in four counties around San Francisco, homeowners associations initiated 15 percent of foreclosures. The median amount owed to associations at foreclosure was \$2,400, with \$800 to \$1,800 of that in penalties and legal fees rather than debts.

It is rare, though, that a homeowner will actually lose a home to an association foreclosure. "The whole goal here is to get the homeowner to pay his or her share of costs, not to take away houses," said Burton Cohen, a lawyer in Scottsdale, Ariz., who has handled about 100 association foreclosures in the last three years. The vast majority of owners, he said, kept their homes.

But the mere threat of foreclosure can result in owners paying legal fees that far exceed the fines or dues they owe. When lawyers threatened to foreclose on her San Diego town house condo three years ago because of unpaid dues, Melissa Colburn, a 34-year-old homeowner, said she paid about \$3,000 to her homeowners association's lawyers, though she owed only \$1,000. "I freaked out," she said.

Then she missed other payments, incurring debts of about \$900. In February 2002 the association foreclosed, and her home was sold for \$5,150. Ms. Colburn did not know about it until eight months later, when she received a notice to vacate. David Peters, the association's lawyer, said, "She knows that if she doesn't pay her assessments, it's going to go to foreclosure."

She sued the homeowners association and its lawyers. Last week the two sides reached an agreement to return the condo to Ms. Colburn.

Last year, California passed a law requiring boards to give homeowners a chance to work out a payment plan before foreclosing. In 2001, the Texas Legislature banned foreclosures for violations of community rules.

A bill proposed this year in Texas would have given homeowners a 180-day reprieve before a foreclosure could proceed. The bill did not pass but its sponsor, Senator Jon Lindsay, a Republican, said he would offer a modified version next session. "I'm not against having homeowner associations," Mr. Lindsay said. "In fact I favor them, but I think they have expanded their powers a little too far."

Some association advocates say the new laws weaken community boards. They argue that the boards are no different from city governments that foreclose on homeowners who do not pay property taxes.

That was the position of the Suncreek Townhomes Homeowners Association in Raleigh, which foreclosed on Mr. Blevins's town house when he refused to pay part of his maintenance fees. "We had responsibilities to other town home owners," said Michelle Wells, president of the association board.

The dispute ended in a settlement out of court. Mr. Blevins, who paid \$60,000 for the house in 1990, got his town house back by reimbursing the association the \$3,000 it had paid for the home and legal fees of nearly \$4,300.

Some homeowners argue that foreclosure is a draconian measure and is often unwarranted. In Mr. Haggerty's neighborhood, for instance, residents are divided over the plight of Carol Farnham, a 54-year-old disabled single mother who owes dues for nearly two years because, she said, her former husband is delinquent in paying child support. Last January, the association obtained a court judgment of \$1,487.85 and put a lien on her home. "This isn't what neighbors do," said Mr. Haggerty, sitting on a worn couch in his living room.

Ms. Fong, the president of the association, said it offered to halve the fines associated with Ms. Farnham's judgment if she agreed to pay the back dues. Ms. Farnham did not respond to the offer and so far, the board has not begun foreclosing.

Tensions in some communities have provoked homeowners simply to get out. Ms. Fong said she and her husband planned to leave as soon as they could afford it. The constant fights with her neighbors, she said, have taken a toll.

"I don't think homeowners associations themselves are wrong," Ms. Fong said. "It's the individuals who live near you."