

## Common-Interest Housing in the Communities of Tomorrow

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### *Abstract*

This article offers a broad conceptual framework for understanding the rise of common-interest housing developments (CIDs), including gated communities, townhouse and condominium projects, and other planned communities. The article begins by describing the CID as an institution and the essential characteristics and varieties of CIDs. Second, the rapid spread of CIDs is attributed to the incentives currently operating on real estate developers, municipal governments, and consumers. Third, this institution is placed in the context of definitions of public and private, and the categories of state, market, and civil society.

The article then presents the eight different “big-picture” interpretations of this overall phenomenon that could inform the public policy framework within which CIDs are situated. They can be seen as an imperfectly realized version of the “rational choice” or “public choice” model, and reform efforts should be aimed at making choice mechanisms more effective.

**Keywords:** Homeownership; Nonprofit organizations; Urban policy

### **What is common-interest housing?**

Privately governed residential enclaves known as common-interest housing developments (CIDs) are the predominant form of new housing in the nation’s fastest-growing cities and suburbs. Over the past 30 years, this massive privatization of local government functions, consisting of over 230,000 housing developments containing about 47 million people, or one-sixth of the U.S. population (Community Associations Institute 2002), has changed the appearance and organizational structure of the nation’s urban areas. As a recent industry report noted,

[s]ince 1970, approximately one in three new residential units built in the United States has been in a development with a community association. In the largest metropolitan areas, more than 50 percent of new home sales are in community associations, and 6000 to 8000 new community associations are formed each year. (Fuller and Durso 2000, 2)

Similar trends have been noted in a number of other nations (Webster, Glasze, and Franz 2002). Common-interest housing is a form of local government privatization that has flourished in an era of reduced faith

in government and increased reliance on market logic. It represents an additional, and the most particularized, level of local government in the U.S. system. These developments have considerable self-governing power, substantial economic resources, a generally high-functioning population, and a vast and growing network of specialized professionals offering their services to this new institutional client. The volunteer directors and professional service providers who manage these housing developments have enormous responsibilities that once belonged to local government.

Common-interest housing includes planned communities of single-family homes, housing cooperatives, and condominiums. Taken as a whole, these three types of developments have several shared characteristics:

1. *Common ownership.* CID home buyers purchase both an individual interest in a particular unit and another interest, consisting of buildings, streets, recreation centers, golf courses, and other facilities, which they own or control in common with all the residents in the development.
2. *Private land use controls.* They buy their property subject to voluminous sets of deed restrictions, rules, and regulations—sometimes known as equitable servitudes or “covenants, conditions, and restrictions” (colloquially, CC&Rs)—and augmented by corporate bylaws. These rules may be minimal, but they can also be pervasive, ranging from architectural controls to lifestyle issues and age restrictions on residency.
3. *Private government.* All owners belong to a homeowners’ association (also known as a community, condominium, or property owners’ association), a private government into which all residents are automatically enlisted at the moment of purchase. The association, usually a nonprofit corporation, is run by the residents and supported by cadres of lawyers and other professionals; it enforces the deed restrictions against all residents and manages the use of property and other aspects of life in the development. Associations collect monthly assessments from all owners and use those revenues to maintain the common areas and hire professionals such as lawyers, property managers, contractors, and accountants as needed.
4. *Master planning.* Most CIDs tend to contain a population and reflect an overall neighborhood lifestyle contemplated in advance by the developer, who designed the physical features of the CID accordingly.

5. *Security measures.* Since the mid-1980s, it has been observed that an increasing percentage of CID housing includes private security measures that fall into three categories: *entry controls*, such as gates, traffic barriers, and guardhouses; *hardened boundaries*, including perimeter walls, fences, or natural barriers such as water; and *internal surveillance*, frequently consisting of roving patrols, video cameras, and alarm systems. It is estimated that one-fifth of CIDs fit the description of “gated communities” (Blakely and Snyder 1997, 180).

There are also significant differences among the three types of CIDs. *Condominium* developments are typically multifamily construction resembling one or more apartment or townhouse buildings. Each home buyer acquires ownership of an individual unit, consisting of the air-space within the walls, coupled with a fractional interest in the ownership of the entire building. The condominium association manages and maintains the building. *Cooperatives* give each owner a share interest in the building or buildings, along with the exclusive right to occupy a particular unit. The cooperative association often has the right to approve the sale of units and may interview prospective owners before granting them the right to purchase. *Planned communities* may include mixes of housing types but typically feature detached single-family homes with their own lawns and driveways, along with common areas such as private streets; recreation facilities such as golf courses, swimming pools, and lakes; and other facilities such as sewer and drainage systems, and parking areas. In such developments, the purchaser acquires ownership of one of the homes, as well as an interest in the association that owns and maintains the common areas.

The differences among these three types give rise to different public policy issues. For example, many planned communities include such a wide range of what would otherwise be municipal facilities and services that they resemble private cities. Planned communities are often located in newly developed suburban and rural areas where city or county government is relatively weak. Legal arguments are being advanced that such associations are de facto local governments and should therefore be required to respect basic federal or state constitutional liberties (Askin 1998; Siegel 1998). Condominium and cooperative associations, by contrast, are often found in urban areas, where general-purpose city governments provide most municipal services, and these associations are more akin to apartment building managers than local governments.

There was a time when CIDs were rare and primarily for the rich, but the past 30 years have seen this form of “trickle-down privatization”

spread rapidly through much of the upper third of the income distribution. Table 1 summarizes the numerical increase in CID housing units since 1970.

*Table 1. Increase in CID Units by Type since 1970*

Type of Association	1970	1980	1990	1998
Condominium	85,000	2,541,000	4,847,921	5,078,756
Cooperative	351,000	482,000	824,000	748,840
Planned community	265,000	613,000	5,967,000	10,562,964
Total units	701,000	3,636,000	11,638,921	16,390,560
CID units as a percentage of total U.S. housing units	<1%	4.10%	11.40%	14.60%

*Source:* Community Associations Institute 1999.

In 1970, CIDs constituted less than 1 percent of America's housing stock. Today, the number of CID units is over 16 million, approaching 15 percent of all housing units. Condominium units increased enormously in number during the 1970s, but during the 1980s and 1990s, planned communities featuring single-family homes took over a larger share of the CID market. Cooperatives are much less prevalent and show no signs of increasing.

CIDs constitute a large and ever-increasing share of new housing, and, consequently, wherever new housing is being constructed in large numbers, there are many CIDs. This would include much of the Sunbelt, the outer suburban ring of large metropolitan areas, and the redeveloping cores of many big cities. For example, California and Florida alone account for some 40 percent of total CID units (Community Associations Institute 1999). Northern Virginia (notably Fairfax County) and southern Maryland, around the District of Columbia, have long been hotbeds of CID construction. The Las Vegas area is experiencing massive growth, nearly all of which is in CIDs (Gottdeiner, Collins, and Dickens 1999).

These units are organized under various types of community associations. Table 2 shows that the total number of associations has increased from about 10,000 in 1970 to some 205,000 in 1998 and also shows that the planned community association has become the predominant form, approaching two-thirds of the total number.

Table 2. Percentages and Total Number of CID Associations

Type of Association	1970	1980	1990	1998
Condominium	12.1%	69.9%	41.7%	31.0%
Cooperative	50.1%	13.3%	7.1%	4.6%
Planned community	37.8%	16.9%	51.3%	64.4%
Total associations	10,000	36,000	130,000	205,000

Source: Community Associations Institute 1999.

Note: Percentages may not total 100 percent because of rounding.

## What drives the spread of CIDs?

There is considerable disagreement over the causes and effects of this phenomenon. I argue that the CID revolution is driven by the motivations of developers and local governments on the supply side and those of consumers on the demand side. CIDs are especially prevalent where land costs are high (McKenzie 1998a). Developers seeking to mass-produce housing for the middle class in such areas have found that CIDs allow them to build higher-density developments. If they can create commonly owned parks, swimming pools, and other amenities, they can put more people on less land and also provide these amenities to buyers to compensate for small lots. Private streets can be narrower than public ones, leaving more land for lots, and common utility lines further lower costs. For these reasons, CIDs enable developers to maintain profits and keep prices relatively affordable despite rising land prices.

Local governments seek growth and increased tax revenues with minimal public expenditure. It is no coincidence that CIDs became the norm after the property tax revolt that began in 1978 in California (on this subject Sears and Citrin observed in 1985 that citizens appeared to want “something for nothing”). Tax-sensitive property owners resist paying for the infrastructure and services needed for new residents, but want certain kinds of services nonetheless. CIDs privatize what would otherwise be government responsibilities. The cost of new infrastructure is added to the price of new homes, and maintenance costs fall on new homeowners’ association members, who pay them through monthly assessments. The associations arrange for trash collection, plow snow in the winter and remove leaves in the fall, repair and light streets, manage parks, and do many other things that government would otherwise have to do. Thus cities can acquire new property tax payers without having to extend to them the full panoply of municipal services and thereby making CIDs “cash cows” for local government. Some municipal governments have begun to virtually *require* that new housing construction consist of CIDs.

These two supply-side incentives are powerful, and my study of California shows that they explain about two-thirds of the variance in CID construction there (McKenzie 1998a). That suggests that developers and local governments are primarily responsible for the rapid spread of CIDs. These institutional dynamics also give rise to certain questions that will be on the public policy agenda for decades to come. First, because CID residents pay both assessments and property taxes, which often support similar or duplicative services, there have been numerous complaints to the effect that they are victims of double taxation. Second, what are the likely long-term implications of the supply-side decision to devolve significant responsibilities onto the shoulders of untrained and unpaid volunteers?

In addition to these supply-side dynamics, the demand for the CID lifestyle cannot be ignored. Many middle- and upper-class home buyers, concerned about crime and disenchanted with government, are searching for a privatized utopia offering a sense of neighborhood control, enhanced security, a homogenous population, and small-scale managerial private government that enforces high standards of property maintenance. Lang and Danielson (1997) suggest that the CID lifestyle appeals to corporate managerial employees who are very mobile and live in neighborhoods where there is a high degree of transience and therefore an absence of relationship-based informal social controls to manage conflicts over routine neighborhood issues. In such “corporate migrant communities,” the formal social controls emanating from a homeowners’ association are seen as a positive feature (Lang and Danielson 1997, 883).

I call this realm “privatopia” because for some people it represents the pursuit of utopian aspirations through privatization of public life. And within privatopia, the terms and conditions of life are defined by developer-drafted contracts that are often at odds with the norms and expectations of liberal democracy. Homeowners’ associations are not restricted by conventional notions of civil liberties, and their activities are supported by a powerful array of professionals, including lawyers, property managers, accountants, and others. Individual homeowners who dispute the authority of their associations typically learn in short order that the courts generally support the authority of this form of private government.

### **Are CIDs “private” or “public”?**

The distinction between public and private is one of the most fundamental in all of western political philosophy, and it has often been formulated as a pair of spheres that are to be kept separate. This

distinction is central to the ideas of classical liberalism and founding thinkers such as John Locke and Adam Smith. In his *Second Treatise of Government*, Locke argued that private property and the ownership rights thereto preceded the creation of the state. Adam Smith's *Wealth of Nations* provided a powerful rationale for allowing individuals to freely exchange goods and services in a marketplace that was not controlled by government, thus creating a private market for property to change hands without interference from the public realm. The private-public distinction is enshrined in the U.S. Constitution, where we find it formulated in the Fifth Amendment, which reads in part, "nor shall private property be taken for public use without just compensation."

Liberal democratic theory has flowed from the private-public distinction and is premised on the ability to make it. But the truth is that the private-public distinction is often hard to make when applied to empirical reality, especially given the institutional transformations of recent decades. There are institutions that seem to have aspects of both public and private, and it has been argued that the line between the two is increasingly blurred (Minow 2000).

The ensuing problems are practical as well as theoretical. In contemporary U.S. politics, the supposed distinction between two separate spheres is an ideological weapon. One sphere is endowed with certain virtues, the other with certain vices. Some people argue that the private sphere is the repository of efficiency and freedom, the public of waste and tyranny. Others claim that the private sphere is the realm of greedy and selfish people, and the public sphere is where "we, the people" act collectively to accomplish great things.

Competing views of public and private arise in disputes between community associations and outsiders, and between community associations and their residents. Suppose, for example, that someone wishes to pass out campaign literature in a gated community. The community association denies that person access. The distributor argues that she merely wants to go into a public place, the streets being in some sense "open to the public" where the public or some significant portion of it is driving, walking, and residing. This gives her the right to be there, she claims. But the association retorts that, on the contrary, this is private property from which the owners and their corporate representative have the right to exclude whomever they wish. Or suppose that the owner of a CID unit wishes to erect a 30-foot pole to display the American flag. The community association refuses to approve its construction. The owner argues that he intends to build on private property and that he has a right to use it as he sees fit, especially for constitutionally protected expressive conduct. But the association asserts what amounts to a public interest in what happens on the owner's ostensibly private

property, saying that what he does can affect the property values of others and claiming the right to regulate what goes on in people's yards.

These conflicts result from people embracing different meanings of public and private, and the different expectations that flow from those meanings. While agreeing on the meaning of the terms may not lead the parties to settle their disputes, it will at least keep them from talking past each other, and it will certainly aid any third party that wishes to understand or authoritatively settle the dispute, as somebody must.

There is a better way to think about public and private, and it has two parts. The first part is to recognize that the terms have multiple meanings. The second is to accept that each of these meanings is a continuum rather than a dichotomy.

Benn and Gaus (1983) argue persuasively that there are three different meanings for the terms *public* and *private*. A thing can be public in one of these senses and private in another. The three ways of using public and private, according to these authors, relate to *agency*, *access*, and *interest*. I will explore these meanings below, but before doing so it is important to understand how to deal with the nondichotomous nature of each dimension.

The best conceptual tool for dealing with blurry distinctions is fuzzy set theory, or “fuzzy logic,” and it comes to social science from the hard sciences and mathematics. As Bart Kosko, one of the leading proponents of fuzzy set theory, put it, “The world is gray but science is black and white” (1993, 8). Fuzzy set theory challenges efforts by scientists to assign things to discrete sets—living or nonliving, plant or animal, and so forth. Efforts to classify are often confounded by things that have characteristics of more than one set. If mammals are warm-blooded, bear their young alive, and have teeth, and if birds are cold-blooded, lay eggs, and have beaks, then how should the warm-blooded but egg-laying, duck-billed platypus be classified? Fuzzy set theory has already begun to find its way into the social sciences, where we find few “crisp” sets and many fuzzy ones (Ragin 2000). This, of course, is the same kind of problem we encounter in classifying community associations as public or private.

Putting these two elements together, we can view the public-private distinction as both complex—that is, having multiple meanings or dimensions—and fuzzy. Combining the Benn and Gaus (1983) scheme with fuzzy set theory, I argue that public and private need to be conceptualized as having three different dimensions, each of which is a fuzzy

continuum, although for explanatory purposes I will show these dimensions as dichotomies.

### *Agency (government-nongovernment)*

When we use public or private in this sense, the question is, Who is the actor, and is it a governmental actor or not? This is what courts think of as the “state action” requirement. A shopping mall or a company town or a homeowners’ association either is or is not capable of state action, and if it is, it is held to the constitutional limits on governments. In the case of a piece of property, we would ask, Is the owner a government or not? If the property is owned by government, it is public; if it is owned by individuals or corporations or some other nongovernmental actor, it is private. If we see this dimension as a continuum instead of a binary choice, we would ask, “How governmental is the owner or the employer, or the other actor?” For example, is a business improvement district more or less governmental than a transportation management authority? And are both of them less governmental than the city of Arlington, VA, and more governmental than the Kiwanis Club?

### *Access (open-closed)*

When we use public or private in this sense, we are thinking about how open or closed something is. That is, to what extent is access to this thing—say, this piece of property—restricted? This meaning is used by economists when they classify things as “public goods,” to mean goods from which nobody can be excluded (Webster 2002b). It is impossible, or nearly so, to restrict access to the air we breathe or the water in the sea. People can use as much of those goods as they want without paying for them. This leads to the well-known problem of the “tragedy of the commons,” in which public goods are exhausted through overuse by individuals whose calculus of individual profit leads them to create a net loss for society (Hardin 1968). “Private goods,” by contrast, can be packaged so as to exclude people from using them unless they pay for them. Air can be packaged in tanks and sold to scuba divers, water can be bottled and sold, and so on. Goods with this exclusion quality can be distributed by market mechanisms that allow prices reflecting their value to be established.

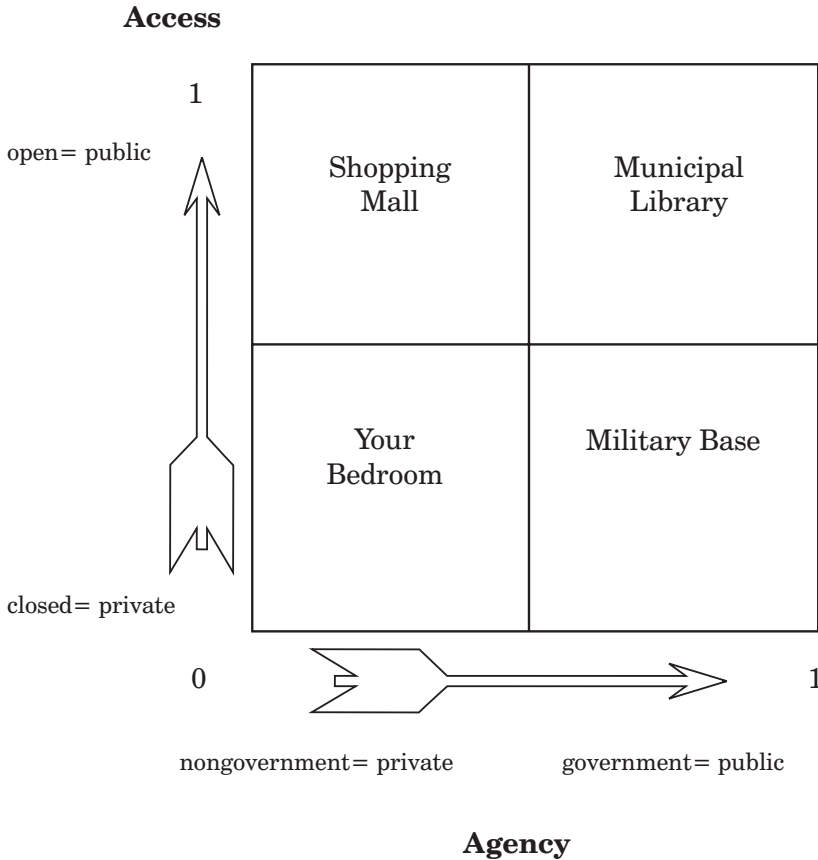
Often a thing may be private on the agency measure of publicness and public on the access dimension. Shopping malls are an example. When I

say that you should not be able to hand out your campaign leaflets in my shopping mall because it is privately, or nongovernmentally, owned (privateness as a nongovernmental agency), the distributor will retort that the mall is held open during business hours to whoever wants to enter and is therefore a public place (publicness as open access).

Some things present the opposite situation, being governmental and thus public in the agency sense, and yet with access so restricted as to be in another sense private. The grounds of a military base or the Central Intelligence Agency budget, which is not disclosed even to all members of Congress, are two examples.

We can model this kind of thing visually using a two-dimensional figure. Figure 1 shows two aspects of private and public, agency and access, modeled as a square.

*Figure 1. Private and Public in Two Dimensions*



*Interest (concerns one—concerns all)*

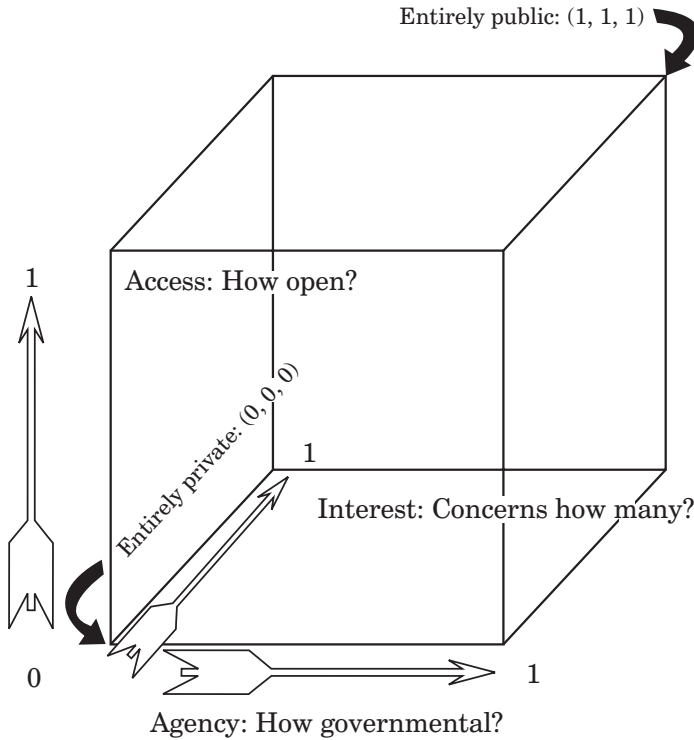
But agency and access do not exhaust the meanings of public and private. There is also the question of “public interest.” When we use private or public in this sense, we are thinking of how many people a thing legitimately concerns. Only the actor? A few? Everybody? For example, a president’s sex life is a private matter, he says, because it’s nobody else’s business—it does not really concern them. Of course, we could produce some serious arguments over what is legitimately somebody else’s business, so let us take what I hope is a clear case. My basement is owned by my wife and me (privateness as a nongovernmental agency). We do not let anybody go into the basement except family members and the occasional guest (privateness as closed access), so the basement is private on both the agency and access dimensions. Does that settle the question?

But what if I have assembled a large bomb in the basement or perhaps put together a nasty soup of toxic chemicals? In that case, the contents of my basement might be seen as a matter of public concern, because the neighbors stand to be immolated or poisoned if my hobbies result in an explosion or the release of toxins into the air or water supply. The basement is private on agency and access, but public on interest.

So, a thing can be public on one dimension and private on another. All these meanings are part of the richness and complexity of the concepts of public and private. And when we speak about whether a community association or an owner’s front yard or the drapes in the living room or the pickup truck in the driveway are matters of public or private concern, we need to keep these meanings in mind. If we specify what we mean when we say something is public or private, we can communicate better and decide where we agree and disagree.

Figure 2 depicts all three dimensions of publicness and privateness. A thing that is fully public would be entirely governmental, open to all, and legitimately concern everybody. It would be at the upper right and rear corner of the cube, at point 1, 1, 1. The text of the president’s annual State of the Union Address comes close to that corner. Something that is fully private would be completely nongovernmental, closed to all but one person, and legitimately of concern only to that person. It would be at the lower left front corner of the cube, at point 0, 0, 0. The John Milius film *Jeremiah Johnson* represents the search for that corner. In this film, Robert Redford plays a 19th century mountain man who treks off into the wilderness to survive entirely alone, beyond the reach of people, government, and all other institutions of human society, seeking to matter only to himself.

Figure 2. Public and Private in Three “Fuzzy” Dimensions



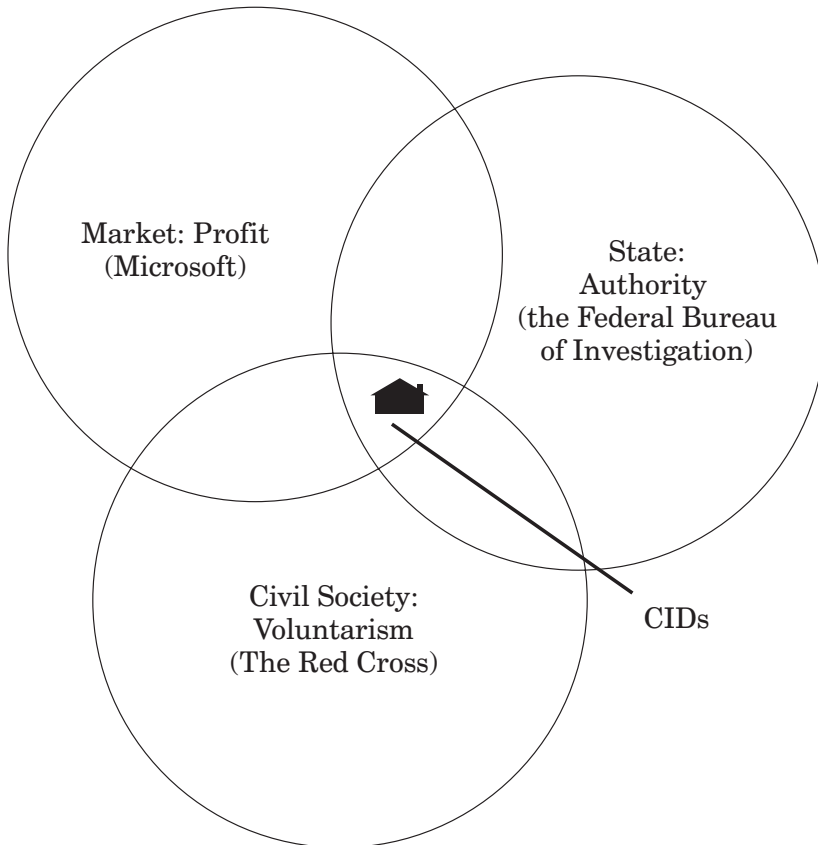
Nothing about common-interest housing can be called fully private or fully public. Everything about it is near the center of the cube, where there is complexity and fuzziness. Conflicts involving different meanings of public and private are situations in which both parties can be “right,” and where the answer may lie in pragmatic compromise rather than litigation. People who are involved with this form of housing and wish to reduce the level of internal and external conflict—especially residents, directors, lawyers, and managers—need to understand this and use the knowledge to resolve conflict, or at least reduce its intensity.

### Are CIDS part of the state, market, or civil society?

Common-interest housing is an institution, and as such, it can be considered in light of the way institutions are customarily described by social scientists and philosophers, who separate the institutions of liberal democracies like the United States into three sectors: *the market*, *the state*, and *civil society*. As with the public-private

distinction, these are fuzzy categories, and they could be modeled as a cube along the lines of figure 2 if we wanted to be more precise. For our purposes, though, the interlocking circles shown in figure 3 are enough for us to consider the differences among the sectors and show how CIDs fit into this scheme.

*Figure 3. Institutional Sectors of Liberal Democratic Society*



### *The market*

Market institutions are based on the notion of profit, and these institutions assume that people are individualistic, rational, and seeking to maximize their own self-interest through a voluntary exchange of goods and services. Microsoft Corporation is one of the clearest examples of this kind of institution. Under the rules of liberal democracy, market-based institutions are not only allowed, but even encouraged, to behave this way, and Microsoft certainly does. As Gordon Gecko said in the

film *Wall Street*, “Greed is good.” In the movie, he was director Oliver Stone’s idea of a villain. But Gecko understood the nature of market institutions, which assume that if everybody makes decisions based on a rational calculation of their own self-interest, the whole society will enjoy the most productive and efficient system for the delivery of goods and services ever developed by human beings.

In the market realm, the law of contract reigns supreme. In fact, contract law is the main contribution of the state to an efficient market. People have to be held to the promises they made, or “assented to,” to have a functioning market, and there is a 600-year accumulation of judge-made common law and legislation (such as the Uniform Commercial Code) that deal with how to do this. Markets have some virtues and vices, which flow from their mainspring—harnessing people’s inherent desire to pursue their own perceived self-interest.

### *The state*

The state, by contrast—and this sector includes all governments from local to national—is based ultimately on the notion of authority, which is defined as a monopoly on the legitimate use of force to compel people to behave in certain ways. The Federal Bureau of Investigation, which is part of the Department of Justice, is an example of a state institution that uses authority every day to accomplish its tasks.

But the requirement of legitimacy, which distinguishes “give me your money or I’ll kill you” from “pay your taxes or we’ll take your car,” sets limits on the state. In our society, government is based on consent, which in turn rests on a social contract. The only claim to legitimacy we recognize is that the citizens have consented to be governed according to the terms of a constitution, which is akin to a contract that sets limits on government. The most important of those limits is respect for the natural individual liberties and due process rights of the citizens. The founding fathers believed that citizens are justified in disobeying and even overthrowing a government that transgresses these limits. There are similarities between the legitimacy claims of governments and CIDs, even though there are differences between consent to government and assent to contract (McKenzie 1998b). But the widespread belief in this country that there are limits to authority explains the frequency with which CID residents rebel at the notion that they cannot display the American flag, put up political signs, or undertake some other activity that normally receives constitutional protection.

### *Civil society*

The institutions in civil society ideally have neither the profit motive nor the ability to use force to compel obedience. Their resource is voluntarism, or the ability to make moral and other claims on people that lead them to do things of their own free will that do not contribute to making them rich. Perhaps it makes them feel good, relieves their guilt, or connects them with their friends (solidaristic incentives); or keeps their minds active and off their troubles; or gives them a sense that all is right in the world—but they do it without being forced or paid. A good example of this is the Red Cross. After the World Trade Center was destroyed by terrorists, the Red Cross induced an enormous number of people to donate blood to aid victims. As it turned out, the blood given was far in excess of what was actually needed. The Red Cross had no power to force people to give blood, nor did it have to pay people to do it. Of course, in ordinary times, it does pay some people to donate blood, but the money to do this comes from contributions that are not coerced and that are not a business investment for the contributor. Other examples of civil society institutions are the family, children's sports leagues such as the American Youth Soccer Organization and Little League, the Salvation Army, and Neighborhood Watch groups.

### *At the intersections of the sectors*

Many people become so enamored of the virtues of one sector that they think, "Why can't the whole society be like [insert your favorite sector here]?" Fans of the market want our government to run like a business corporation and have been saying so from the Progressive Era of the 1890s to the Clinton administration's Reinventing Government fad (Osborne and Gaebler 1992). Advocates for the state argue that government is the primary avenue for purposeful and rational collective action, citing major and transformative government initiatives such as the New Deal programs of the 1930s. And civil society has its proponents, too, with people arguing that regulation of society through the "third sector" is the wave of the future. President George H. W. Bush's call for "a thousand points of light" was an attempt to invoke the spirit of voluntarism and tap the strengths of civil society.

Rather than argue for the virtues of one sector over another, it is more sensible to consider how much takes place at the intersections of the circles. Robert Putnam (1992) argues that the strength of a functioning democracy is premised on the degree of vitality and organization of its civil society. He also feels that civil society in this country, as measured by declining participation in certain organized voluntary activities such

as bowling leagues, is eroding, and he attributes this largely to the influence of television (Putnam 2000). The United States today is experiencing a resurgence of patriotism, which also occurs at the connection of the state and civil society. Governments try to supplement the use of authority to compel obedience by promoting a powerful “we” feeling among the population and connecting that feeling to the state. We call this feeling nationalism or patriotism, and it motivates people to pay taxes, sacrifice, and even die for their country voluntarily. Also at this intersection is the Faith-Based Initiative, which is an effort to support voluntarism with tax dollars. The Establishment Clause of the First Amendment is one of the rules that polices this border, and its meaning may well be tested soon in connection with this initiative.

Trade associations and other interest groups live at the intersection of the market and the state. Some of them are so tightly connected to government that political scientists identify “iron triangles,” where policy areas such as defense and agricultural spending are entirely controlled by three parties: interest groups, executive branch agencies, and congressional committees. Interest groups are so important that it is literally impossible to understand U.S. politics without studying their activity. The First Amendment protects interest group activity, but campaign contribution laws and the Supreme Court decisions on commercial speech mark out some sort of fuzzy boundary between the market and the state. The story of Franklin D. Roosevelt’s New Deal programs before the Supreme Court and the resulting court-packing crisis of 1937 are about the war over the market-state boundary.

At the intersection of the market and civil society, we find some interesting issues as well. Government affords tax incentives to charitable institutions on the condition that they not engage in profit-generating activities. The trade-off for being able to solicit contributions that people can deduct from their taxes is that a charity does not compete against companies that do not have that advantage, but that instead get to keep whatever profit they can generate. So when ostensibly charitable institutions begin to look like profit-making corporations, the Internal Revenue Service sometimes invokes rules that mark this boundary.

At the intersection of all three circles, where the boundaries of state, market, and civil society are at their fuzziest and hardest to police, we find the CID community association. This institution draws on the incentives and characteristics of each sector. As a nonprofit corporation that depends on volunteers to serve as directors and officers and that aims to create a sense of community, the community association

functions like a civil society institution. To the extent that the association is carrying out what would otherwise be local government functions, it is akin to an extension of the state. And an association's duty to concern itself with property values is a market-based incentive. Owners who serve as board members are influenced by market incentives when they contemplate using association funds in ways that advance their individual economic interests. They are at least quasi-state actors when they administer what would otherwise be municipal services and enforce rules. Further, when board members see themselves as volunteers donating considerable time to their community to make it a better place to live, they are thinking like civil society actors.

Other CID participants are in a similar situation. Developers are in business to make a profit, and for most of them, this incentive takes precedence over all others. So for them, the economic significance of CIDs is paramount. It allows them to put more people on less land and facilitates niche marketing practices, for example. Yet developers are also driven by state-mandated considerations, such as impact fees and other practices that require them to build everything from private streets to public schools and off-ramps as a condition of getting building permits. The trade-off is the developer's ability to tell government that if the costs get too high, the development will be built in some other municipality or state. And civil society considerations motivate some developers who have embraced traditional neighborhood design (TND) or New Urbanist modes of construction out of a desire to create and sell a sense of community.

### **Eight competing interpretations of the rise of common-interest housing**

Having given my thoughts on how to view the institution of common-interest housing in the context of liberal democratic ideas, I would like to turn to the various ways in which the overall phenomenon of the CID revolution—not just the community association itself—has been characterized. All contain some truth and all are worthy of serious consideration by anybody involved in producing or maintaining this form of housing. I discern eight interpretations, and as shown in table 3, I have grouped them according to my view of the dominant philosophical source of each interpretation. Three are derived from neoclassical economics, two are based on democratic socialism, two come from conventional understandings of liberal democracy, and one is a critique from the perspective of critical urban theory.

Table 3. **Big-Picture Interpretations of CID Housing**

Perspective Drawn from	Interpretation of CID Housing
Neoclassical economics	1. Libertarian future 2. Rational choice 3. Privatization of local government
Democratic socialism	4. Communitarianism and social capital 5. Socialism by contract
Liberal democracy	6. Fragmentation of society and the body politic 7. Secession of the successful
Critical urban theory	8. Segmentation and fortification of urban space

### *Libertarian future*

In *Anarchy, State, and Utopia*, libertarian philosopher Robert Nozick (1974) argues that only “the minimal state” can be morally justified, because any state more extensive than that, including all those with a welfare state or redistributive justice component, violates the rights of individuals. In elaborating his theory, Nozick (1974) shows that in a state of nature, private protective associations could come into existence by voluntary and contractual activity and eventually produce the minimal state consistent with the rights of individuals. This is an ethical vision of the just society, and some would argue that the rise of CIDs, if extended to encompass all housing stock, could replace existing local governments—a transformation that would represent nothing less than the realization of Nozick’s just society (Nelson 1989). Such a transformation would reach down the income distribution and enable even the poor to control their neighborhoods (Foldvary 1994).

### *Rational choice*

There is a line of “rational choice” or “public choice” scholarship that uses theories drawn from microeconomics to understand politics. One of the pioneers of this approach, Charles Tiebout (1956; Ostrom, Tiebout, and Warren 1961), sought a way around Paul Samuelson’s (1954) proof that there is no way to determine the optimal level for the provision of public goods. He argues that under certain conditions, there could be a market for local government services and that in light of their preferences, people could choose communities to live in based on a cost-benefit analysis of the services offered and the cost of those services (taxation). By this logic, a smaller unit of local government and a wide range of choices increase the likelihood that people will be able to choose the amount of services they prefer. By contrast, like

monopolistic business firms, large cities are likely to overproduce services and overcharge for them. Fifty suburban governments will produce more efficient government than one big city with the same number of people. Five hundred CIDs would be even better. Common-interest housing, because it privatizes government functions and distributes them at a lower level of aggregation than the typical city, potentially affords greater efficiency gains and greater consumer satisfaction.

### *Privatization of local government*

The “reinvention of government” rhetoric of the Clinton administration followed on the heels of the “privatization revolution” started by the Reagan administration (Savas 1987). Privatization in the United States is based on the belief that there must be a better way for government to deliver goods and services, from contracting out or vouchers, to off-loading them entirely to private actors. The goal is to obtain efficiency gains—more and better services for less money—while maintaining accountability to the public for seeing that the services are actually performed properly (Donahue 1989).

There is no doubt that, in addition to whatever else they may represent, CIDs are a form of privatization. For some scholars, they represent a new layer in an intergovernmental system that is evolving for the better, but not radically changing. Robert Dilger makes substantially that case in his book *Neighborhood Politics* (1992).

Recent events in the Sunbelt, particularly in what Lang and Simmons (2001) call the “Boomburbs,” suggest that further research is needed to discern the long-term impact of common-interest housing in the fastest-growing parts of the nation. Increasingly, some cities—Las Vegas and Henderson in Nevada, for example—are mandating that virtually all new housing construction must consist of CIDs. This practice, in essence, turns the land use control process into a fiscal instrument, enabling cities to acquire new property tax payers without having to extend the city’s governmentally funded infrastructure to them. Such practices may be driving up the cost of new housing by adding infrastructure construction costs to the price (McKenzie 1998a). The cost of maintaining that infrastructure adds to the cost of housing over the years for CID residents. This practice keeps taxes low for existing residents, but only by passing the infrastructure maintenance burden on to CID newcomers. Further research is needed in Boomburb areas to determine what effect this governmental practice may be having on housing affordability. Moreover, the Lang and Simmons (2001) analysis raises another issue that merits further research: To the extent that

Boomburbs can increase population dramatically without correspondingly developing governmental capacity, a mismatch between what could be seen as vestigial governments and big-city problems could develop.

### *Communalism and social capital*

There are those who believe that CIDs are a vehicle for advancing communal values or social capital. The New Urbanist or TND schools of architecture promote the notion that community associations can be used to enforce a way of life in planned developments that is consistent with community building (Duany, Plater-Zyberk, and Speck 2000). Celebration, the TND-influenced development built by the Disney Corporation in the Orlando area, has community-building activities that are administered through a nonprofit corporation. Celebration may prove to be a test case, but only time will tell whether such claims are valid (Foglesong 2001; Frantz and Collins 1999; Ross 1999).

Related to this as well is the HOPE VI program, which is funded by the Department of Housing and Urban Development and involves the demolition of high-rise public housing projects and their replacement by mixed-income developments influenced by New Urbanist ideas. Cabrini-Green, one of Chicago's worst examples of blighted public housing, is being rebuilt in this fashion. Again, it is too early to evaluate the extent to which the community associations in these projects will be able to create a sense of community or build social capital.

### *Socialism by contract*

Some people see common-interest housing as an opportunity to realize a form of socialism by contract. In New York City, Chicago, and a number of other places, there are housing cooperatives where like-minded people, many of them on the political left, feel quite at home. The self-governing capability, power to restrict membership, and group control of ownership are attractive to many who distrust the market and believe in centralized control of capital assets. Indeed, the limited-equity housing cooperative has long been a staple of the left's housing prescriptions for the United States. In the 1920s, this idea was pioneered by the City Housing Corporation, Alexander Bing's development company. Lewis Mumford and other advocates of Ebenezer Howard's corporate-socialist Garden City Movement supported these notions (McKenzie 1994).

In a related vein, the co-housing movement should be considered as a variant or hybrid of the developer-created CID and the co-op and is seen by some as being more consistent with communal values and shared property ownership (McCamant and Durrett 1993). For an interesting analysis of co-housing and a comparison with the CID, see Mark Fenster's recent (1999) law review article.

In what was once called the communist bloc, including Russia, China, and Bulgaria, privately governed communities are appearing with sufficient frequency that urban planner Chris Webster was moved to ask in a speech recently, "Can capitalism produce sustainable communism?" (2002a).

### *Fragmentation of society and the body politic*

In 1992, Arthur M. Schlesinger, Jr. published *The Disuniting of America: Reflections on a Multicultural Society*, advancing the idea that this nation is coming apart under the strain of multiculturalism. Civil society, he and others argue, is fragmenting as any sense of common national identity becomes unsustainable, with the label "American," for more and more of us, preceded by a hyphen and something else. In a related vein, political scientist Benjamin Barber (1996) argues that the nation state is being pulled apart from above and below by globalism and tribalism. From above, the forces of "McWorld" are those of global corporations that tend to homogenize people into a common world of mass consumption. But from the bottom comes what Barber calls "Jihad," or intense local social movements based on religion, language, or ethnicity (1996).

It can be argued that CID proliferation and niche marketing can promote such fragmentation. Gun lovers, boat aficionados, golfers, senior citizens, young singles, young marrieds—each can have its own homogeneous community, targeted to a very specific income range and marketed carefully to exactly the right groups. Such a country is vividly imagined in the cyberpunk science fiction novel *Snow Crash*, by Neal Stephenson (1992), who depicts a Los Angeles fragmented into residential enclaves—New South Africa, Greater Hong Kong, and so on. Whether it becomes a reality, though, remains to be seen and depends on a linear extension of current trends into the future.

### *Secession of the successful*

The gated community has become the most dramatic visual representation of the notion that the country's affluent are using CIDs to have their own governing institutions and in essence secede from the United States. This claim has been made from both ends of the ideological spectrum. Former Clinton administration Secretary of Labor Robert Reich calls CIDs the "secession of the successful" (1991), and conservative (or libertarian) Charles Murray (in Stelzer 1991) envisions a "caste society" emerging in America "when 10 or 20 percent of the population has enough income to bypass the social institutions it doesn't like in ways that only the top fraction of 1 per cent used to be able to do" (29–30). Anthropologist Setha Low (2001), who conducted ethnographic studies of gated communities in New York City and San Antonio, writes of the "discourse of urban fear" that leads people to live in gated communities, where the physical environment produces "loss of a sense of place...increasing class separation...[and] a landscape that encodes class relations and residential (race/class/ethnic/gender) segregation more permanently in the built environment" (Low 2001, 45). She views the secure CID as a reflection of demand among the affluent for a safe haven that they control: "Gated communities respond to middle-class and upper middle-class individuals' desire for community and intimacy and facilitate avoidance, separation, and surveillance" (Low 2001, 48).

### *Segmentation and fortification of urban space*

Perhaps the most sweeping and dramatic interpretation of the larger picture into which CIDs may fit is the idea that the nature of urban governance is being transformed and that such housing is a part of that process. Some observers have noted a long-term trend toward fragmentation of general-purpose governments into various kinds of special-purpose districts—transportation management authorities, port authorities, business improvement districts, special improvement districts, special assessment districts, tax increment financing districts, and so on (Pack 1992). Business improvement districts, for example, came into existence in 1975 and have spread rapidly, so that there are now more than a thousand such districts in the nation. Like CIDs, business improvement districts do not observe the standards of liberal democratic governance despite being a hybrid of public and private (Briffault 1999).

Some theorists contend that this segmentation of urban space and governance into various forms of special districts is largely political in nature. They contend that processes are driven by business interests

that are creating special-purpose urban governments that allow affluent citizens to “acquire services, to keep their taxes low, to wall out the poor, and to indulge their taste for racial exclusion” (Burns 1994, 5). These independent microgovernments, they say, permit economic and social elites to put resources beyond the reach of democratic processes and to do things by contract, such as setting property qualifications for voting, that would otherwise be impossible in a public setting where constitutional rights and liberties apply. Nancy Burns, in her study of special districts, notes that “in recent years, citizens have been forming cities that provide few services” (1994, 9). It can be argued that CIDs fit into this picture as yet another kind of special district providing municipal services and as such could be seen as an integral part of urban governmental fragmentation.

Such processes can be interpreted as creating a sort of “parallel state” (Mallett 1993). Mike Davis’s scathing *City of Quartz* (1990) describes a Los Angeles that, in his view, has been divided into fortified enclaves for the affluent and militarized public spaces where a hostile police force terrorizes the poor. Ultimately, the argument goes, segmentation of urban space is about political power being reconfigured, and a movement into a sort of post-liberal democratic America (Judd 1995).

### **Conceptualizing CIDs for policy purposes**

If there are eight ways to place CIDs into the big picture, then which one of them is “right”? In my view, each of these interpretations contains some empirical truth, but they have different normative outlooks. The obvious differences in basic premises, internal logic, and preferred outcomes among libertarianism, socialism, conventional liberal democracy, and critical urban theory are magnified because, as noted earlier, CIDs blur boundaries. It is possible even for thinkers with similar ideological perspectives to come to different conclusions about the significance of CIDs.

That is ultimately why the question “What are they?” can only be answered pragmatically—that is, in terms of some specific purpose. The limited purpose that I think needs the most attention at present is that of framing a discussion to include all the various constituencies concerned about CIDs—homeowners, developers, professionals, government officials, and academics. So, the question “What are they?” can be rephrased as, “What perspective best helps us understand CIDs for purposes of considering their role in tomorrow’s communities?”

In my view, the rational-choice perspective offers a good starting point for that discussion. This is not meant as an endorsement of rational-choice theory in general. This theory is one of the leading paradigms in political science and public policy analysis, but it has been subjected to intense criticism (Green and Shapiro 1996; Stone 1997), and it is beyond the scope of this article to enter into that debate. The suggestion to use rational choice as a starting point for thinking about CIDs and the urban future is a practical acknowledgment that at this moment, for this issue area, the most productive conversation will result from beginning with this particular language.

The sheer number of CIDs in operation, the large and increasing share of new housing construction they represent, and the powerful forces that drive this trend all point to one conclusion: For the foreseeable future, CIDs must be considered a permanent feature of urban life in the United States and elsewhere. So, for better or worse, CID housing has an important and probably growing role to play in the communities of tomorrow. Most people who see that as a good thing speak the language of rational choice and neoclassical economics. They make their case for CIDs by invoking values such as efficiency, freedom of choice, and contract. Consequently, it makes sense to take CID housing on what are, in a sense, its own terms: the terms of rational choice.

The touchstone of rational-choice theory is the Tiebout model (1956), and any discussion of CIDs and the urban future should begin by comparing the real world of CIDs with that model.

### *Real-world CIDs versus the Tiebout model*

Tiebout's (1956) model assumes certain conditions and then argues that if those conditions are met, the problems of public goods can be overcome, and we can have an optimal distribution of public goods and services. These conditions are as follows:

1. Fully mobile "consumer-voters" who, after considering the level of taxation, will move to the community that best suits their preferences
2. Consumers who have full knowledge of the difference in taxing and spending among suppliers of municipal goods and services and who react to those differences
3. A large number of communities offering different levels of various services and taxation levels to choose from

4. No restrictions on moving because of employment opportunities
5. No external economies or diseconomies among communities (For example, if community A reduces its crime, that does not increase crime in community B.)
6. An optimum community size for every pattern of service provision (In other words, for any given bundle of services, there is a specific number of residents for whom the services can be provided at the lowest cost.)
7. Efforts by communities to reach the optimum size dictated by their pattern of service provision (meaning that they would try to attract new residents, keep a constant population, or reduce the number of residents in order to reach their optimum size)

These conditions make it clear that the model is designed to maximize efficiency and consumer satisfaction through creating opportunities for individual choice. All the gains to be had from CIDs, compared with delivering services the traditional way through municipal governments, arise from the existence of informed choices by consumers and, of course, by CIDs.

However, the reality of CIDs as they exist today is at odds with this model in a number of significant respects. Consumers find their choices constrained in many ways. Although there is great variation in architectural features among CIDs, there is much less variation in many of the basic terms of governing documents, which tend to be standardized by the legal profession and the mortgage insurance industry. Leading community association lawyer Wayne Hyatt has criticized the “legal inertia” and “reliance upon forms” that produce this standardization (1998, 336). Even where variation among CID regimes does exist, the ability to make informed choices is reduced by the standard practice of encumbering each unit with voluminous sets of governing documents drafted in legalese, instead of simple guidelines written in plain English. Many provisions are incomprehensible except to an attorney—and a specialist at that.

Consequently, consumers are not by and large able to have full knowledge of the differences in the regimes from one CID to another, to the limited extent that such differences exist. People cannot easily choose various levels of social control, so there is no mechanism for determining whether this service is being oversupplied. This means that there is no real market mechanism operating, and according to Samuelson’s (1954) proof, the danger of overprovision of the social

control function exists just as it does with any service provided by a municipal government.

The high level of conflict within CIDs over rule violations, as measured by lawsuits and press reports, suggests that this may be the case. And when residents end up involved in litigation with their CID board of directors, their ability to move is reduced because they must disclose the existence of the lawsuit to potential purchasers, and a lien for unpaid fines or assessments is recorded against the deed and becomes a cloud on the title.

Choice is further restricted because in the most CID-heavy areas, some governments virtually or literally mandate CIDs in new housing. This reduces or eliminates the ability of consumers to express a preference for CID versus non-CID units at a given price. If governments promote CIDs for their own reasons, we do not know to what extent the current level of residency reflects consumer preference for CIDs as opposed to a preference for a new house in a certain metropolitan area or city.

The existence of external economies and diseconomies is an interesting empirical question, particularly in terms of whether CIDs with high levels of security drive crime elsewhere, to other CIDs with fewer anti-crime measures or to non-CID neighborhoods. Presently, data to answer the question are lacking.

The question of optimal size is another area where most CIDs lack flexibility to meet Tiebout's (1956) criteria. They are planned for a certain number of units and a certain package of services and typically do not have the capacity to add or shed units or residents to increase efficiency and lower the cost of services per resident.

So, there is an imperfect match between Tiebout's (1956) model and the reality of CIDs. Moreover, this model does not address the question of choices made within CIDs. This is important, because in the model, the only way to express a preference is to enter or leave a city or a CID. But in reality, dissatisfied consumers have the choice of staying and trying to bring about change. Hirschman's classic work, *Exit, Voice, and Loyalty* (1970), uses the language of economics to address this situation. He emphasizes the significance of "voice": consumers or members expressing their dissatisfaction directly to authority, thus enabling authority to find the source of the dissatisfaction and rectify it. In cities, the constitutional guarantees of political liberty and due process of law facilitate this process and allow cities to adapt and grow in their ability to satisfy citizens' preferences. But in CIDs, civil liberties and due process need not apply and rules are frozen in time at the moment of creation. Requirements for changing recorded CC&Rs are often

onerous, so that a two-thirds supermajority of all owners may be necessary. Restrictions on voice mean that CIDs have a limited ability to rectify mistakes in the original plan or adapt to changing circumstances or changing populations, and this produces dissatisfied residents who are faced with the options of “lumping it” or selling their homes.

### **Toward better CID communities of tomorrow**

A comprehensive discussion about CIDs and the urban future could be based on assumptions that allow the Tiebout (1956) model to be put to the test. Such a framework would maximize individuals' ability to make informed choices. Both governmental and nongovernmental organizations would be involved in making this public policy.

Public policy would promote variety in new housing by seeing to it that new CID and non-CID units are both available. Consumers would not be forced into CID housing because there is no other real choice for them to make if they want a new house. And there would be significant variation among CIDs, not just architecturally but with respect to the amount and type of social control. All documents would be written in plain English and would be limited to a reasonable length, so that potential buyers and existing residents would be able to make entry, voice, and exit decisions. People would give up fundamental constitutional liberties only where there is a knowing, intelligent, and explicit waiver of those rights.

Also, people would be held to the contracts they actually make, because the contracts would be freely entered into, based on a range of choices, composed of terms that were actually subject to negotiation, and not in violation of fundamental public policies. Individuals would be able to voluntarily set up rules they wish to live by and enforce them in their communities, subject to basic constitutional liberties and due process of law. They would not be bound by developer-drafted regimes that are virtually impossible to change.

Associations would be able to collect the assessments they need and prevent free riding. Society would be able to realize whatever efficiency gains accrue from smaller units of service delivery. Privatization of local government functions might or might not produce those gains, and there would be provision for publishing data enabling us to answer that very question.

It exceeds the scope of this article to go beyond a general statement of this proposed policy framework. Further research could explore a

number of major unanswered questions. For example, can the consumer choice and self-governance potential of CIDs be harnessed to satisfy existing consumer preferences while retaining the standardization and stability expected by financial institutions? Do CIDs produce efficiency gains in service provision? Do they also increase the cost of housing and racial and class segregation? If so, how should the benefits be weighed against the costs? Are we witnessing a sort of trickle-down privatization, in which CIDs are spreading by moving down the income distribution and reaching sectors of the population that do not accept the contractual rationale for private government and lack the education and experience needed to manage a CID? What are the long-term consequences for the public realm, however defined, in places with large concentrations of CIDs? What does the future hold for such places, given that the private infrastructure within common-interest housing in these areas can be expected to need major repair or replacement over the next couple of decades and given that available reserves may not be adequate? What kind of overall metropolitan government framework needs to be constructed to accommodate increased privatization of local government?

Tiebout's (1956) model and the rational-choice discourse suggest themselves as a place to begin addressing such questions as these. But the many issues presented by the rise of common-interest housing cannot be answered without reaching beyond that paradigm. An enormous number of people and many large and powerful institutions are now heavily invested in such housing. Any conversation about the communities of tomorrow must include a wide range of participants who understand the significance of common-interest housing from a variety of perspectives.

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