

CONDOMINIUM GOVERNANCE IN CHINA
INSTITUTION AND PRACTICE

中国区分所有权住宅的 管理：制度和实施

● 陈丽梅 著



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CONDOMINIUM GOVERNANCE IN CHINA: INSTITUTION AND PRACTICE

By

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ABSTRACT

This research seeks to explain the institutional design and implementation of condominium governance in China. It firstly traces the course of the evolution of condominium institution in China and concludes that it resulted from the privatization of the provision of public goods and services related to housing. This study finds that the condominium institution in China has two distinct features compared with its counterparts in other countries and regions: non-mandatory formation of homeowners' association (HOA) and the involvement of state.

This study then analyzes the situation of the condominiums in Chinese cities and identifies two key problems of overuses of the common elements and inadequate investment on maintenance due to the absence of self-governance of homeowners in many communities. Club good theory, which is widely accepted to rationalize the existence of the self-governance institution, fails to explain the case of condominiums in China. This research argues that the condominiums are ubiquitously subject to the dilemmas of commons. The establishment of self-governed HOA in communities in is the community solution initiated by homeowners to solve the commons problems.

The study examines the practice of the establishment and activities of HOAs in Shanghai and Shenzhen and reaches three essential conclusions. First, the implementation of condominium institution in communities depends on the devotion of some owner activists, which echoes critical mass theory of collective action. The critical homeowners are made up of leaders and 'bridge group'. The leaders usually stand up under two catalytic conditions: the direct encroachment of developer and/or property management company and the persuasion of grassroots state agency. The 'bridge group' plays important role to mobilize the silent homeowners. Second, the knowledge and skills of the leaders determine whether the community can achieve legitimacy, autonomy or support from the state so as to exercise self-governance. Third, the residents' committees have been delegated by the state to control the self-governance of homeowners. However, the power of the residents' committee varies with the characteristics of the homeowners due to their informal power strategy. The variation of the strength of grassroots agencies of state, by and large, accounts for the different numbers and different powers of the HOAs amidst cities in China.

This research makes original contribution to theoretical interpretation of the implementation of condominium institution in communities in China and explains the empirical phenomenon of the variation of the coverage and extent of self-governance of HOAs within China.

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CHAPTER ONE: INTRODUCTION

1.1 PRIVATE GOVERNANCE OF HOUSING

At 13:30p. m. on 27 December 2008, approximately 70 people convened in a meeting in the basement of a building within a housing complex in Yangpu District, Shanghai, China. The banner in front of them read: “The Eighth Owners’ General Meeting of the First Owners’ Assembly of Sanxiang Millennium Garden”.

Sanxiang Millennium Garden is a private community completed around 2002. It comprises 961 units owned by 949 owners, including the developer Sanxiang Real Estate. Prior to the meeting, all the owners were grouped into 85 sections and among every section a representative was elected. Forty-seven representatives were present this time, meeting the quorum of a valid owners’ general meeting. An additional 16 participants were homeowners who voluntarily attended the meeting.

Mr. Li Jin, the vice chairman of the owners’ committee, presided over the meeting. The meeting proceeded as follows: first, the property management company, Shanghai Wanya Property Management Ltd., reported its performances in 2008 and work plans for 2009; second, Mr. Jin Xin, as well as two other owners’ committee members, reported on the committee’s accomplishments in the second half of 2008; and third, the votes on issues requiring collective decision from all owners were counted.

The prevailing issue at the time involved the current property management firm whose services should be retained or not. The vote sheet was printed by the owners’ committee and sent out to all units a week prior to the meeting. The votes containing the owners’ signatures were collected by the representatives or slipped into a box at the community’s front gate. After the votes were tallied, the Wanya Property Management Company got its contract renewed given 947 affirmative votes, 13 dissenting votes, and one abstain vote.

Such is a regular homeowners’ meeting in a private housing complex in urban, China. Although in the form of representatives’ congress because of limited space, it features the collective governance of community by all homeowners who participate via voting on the important issues faced by the community. In addition to outsourcing technical management tasks, the homeowners have governed their housing complex in other aspects. As duly reported by the committee, Sanxiang Millennium Garden tackled a number of issues in the second half of 2008, the first of which had focused on the maintenance fund, which reached 12,802,012.28 yuan (RMB) by the end of October. This financial balance included 183,586 yuan worth of indemnity from former property management company Xuhu Property Management Ltd., 100,000 yuan worth of rent from the common properties, and 163,942.50 yuan worth of expenditures for decorating the meeting room, purchasing flood control facilities and

speed bumps, maintaining the lawns, and so on.

The second issue involved a lawsuit against the developer for its fraudulent advertisement of equipping the community with “intelligent” facilities; this had been accepted by the court. Another lawsuit under preparation involved the occupation of the community clubhouse by the developer.

The third issue, meanwhile, focused on planning for the upcoming tasks in 2009, including enhancing supervision over the current property management firm, checking and claiming the ownership of all basements in the community, updating the ID card system for entrances and parking space, maintaining and repairing all gates, handrails, greenlands, exposed stands of air-conditioners, and so on.

On September 24 of the same year, the owners’ committee received an official letter from the First Division of Chinese Community Party (CCP) Branch in Sanxiang residential area, strongly suggesting an amendment on the decision-making rules of the owners’ assembly. The decision-making rules of owners stipulated that the vote sheet received by homeowners but without return of vote or any opinions would be automatically considered as “affirmative”. The letter’s final section read: “we expect the owners’ committee to take [seriously] the suggestion from this division of CCP which represents the opinion of CCP members and other people. Do take concrete measurement and respond to us as soon as possible. We also expect [that] the owners’ committee can stand on the position of ensuring a harmonious society and take our suggestion so as to march towards democratization”. Several months later, the chairman of the owners’ committee exposed the motivation of the CCP division behind the said letter: “They know [of] our attempts to fight with the developer and try to hinder our attempts [from being] realized through making our proposal invalid in owners’ votes” (Interview, December 26, 2008).

The first episode of private governance by Chinese homeowners may appear to be familiar to those from the countries and regions with common-interest developments (CIDs). CIDs include three types of private housing: condominiums, cooperatives, and planned-unit developments (PUD). Condominiums refer to the housing complexes in which the homeowners own their particular units or single houses and land; jointly hold collective ownership of streets, green spaces, and facilities; and are entitled to membership with the homeowners association (HOA) (Glasze, 2005, p. 223). In a cooperative, each owner buys a share of the whole housing development and an exclusive right to a particular unit; the cooperative association often reserves the right to approve the sale and purchase (McKenzie, 2003, p. 205). In a PUD, the homeowner purchases “ownership of one of the homes, as well as an interest in the association that owns and maintains the common areas” (*ibid.*, p. 205).

Condominiums, cooperatives, and PUDs differ with respect to the specific structure of individual homeowner’s property rights, as mentioned above. However, they share a number of common features. CIDs are characterized by five essential traits: (1) collective ownership or control of common elements such as land, street, clubs, and other facilities; (2) contractual control of many aspects of life in light of bylaws, covenants, and other rules; (3) mandatory membership of every owner in the homeowner’s association to govern the community collectively; (4) a common planning of physical features; (5) shared goods and services often circumscribed by gates and walls (McKenzie, 1994, p. 19; McKenzie, 2003, p. 204-205). The first three features pertain to the institutional contents of

private governance of housing, while the latter two are related to the private provision of public goods and services. Therefore, private governance and private provision of goods and services are two essential characteristics of CID housing. These two aspects are interrelated, which will be elaborated later.

1.1.1 COMMON-INTEREST DEVELOPMENTS IN THE WORLD

The second half of 20th century witnessed an expansion of CID housing in many countries and regions across the world, especially in America, Latin America, Africa, and Asia (Glasze, Webster and Frantz, 2006). The United States has especially caught the academia's attention primarily because of the magnitude. Over 60 million Americans lived in an estimated 300,000 homeowner associations in 2007; this figure was pegged at 45 million residents in 223,000 communities in 2000 (Community Association Institute, 2008).

The CID's continuous expansion in the world has elicited heated discussion among scholars from a wide variety of disciplines, including political science, sociology, economics, geography, and urban planning. As pointed out by Glasze, Webster, and Frantz (2006, p.1), "there is hardly another form of urban development that has received so much public attention since the late 1990s as privately organized, and often secured, housing development."

The keen interest in CID housing lies in the concern over the departures it represents from the government-organized urban life. Commentators commonly grasp one or several traits of CID housing and interpret the dramatic changes it leads to. In democratic regime, CIDs have been studied in eight ways (McKenzie, 2003): (1) enhance individual liberty and restrict the power of state; (2) provide public goods and services more efficiently and better than government; (3) transform government through privatization; (4) help to build sense of community and social capital; (5) offer a place to pursue socialism through contractual governance; (6) fragment society into many enclaves with similar income and/or other features; (7) become the castle of the middle class and upper middle class's to secede from the rest of society; (8) segment urban landscape physically, socially and politically. These studies partly exemplify the causes and impacts of CID housing in democratic context.

In existing literature, research on CID mainly commences from two major aspects: the physical form of being gated and private governance. These two aspects are separately or jointly examined with respect to their causes and consequences.

The term "gated community" has been widely employed to discuss CID. CID is often gated, walled, and securitized. "Gated communities are residential areas with restricted access in which normally public spaces are privatized. They are security developments with designated perimeters, usually walls or fences, and controlled entrances that are intended to prevent penetration by nonresidents... Their gates range from elaborate two-storey guardhouses staffed twenty-four hours a day to roll-back wrought-iron gates to simple electronic arms" (Blakely and Snyder, 1997, p.2). However, being gated per se is never the issue; the goods and services it circumscribes to distinguish insiders from outsiders are of the essence. Gated communities generally fall under three categories: lifestyle communities, prestigious communities, and security zone communities (Blakely and Snyder,

1997). In lifestyle communities, leisure activities and amenities, as well as safety measurements, are provided. In prestigious communities, the gates are erected to project a special image and identity. In security zone communities, defense from crime and outsiders is of paramount importance.

Kenna and Dunn (2009) have outlined the conditions under which demand for these goods and services have sprung up across the globe. As Kenna and Dunn (2009, p. 801) have stated, "one of the most significant shifts in the literature on private communities in recent years has been the movement away from discussions of private communities as manifestations of racial or ethnic segregation to discussions of private communities as representations of a more class-based segregation". In America, gated communities were mainly for the very rich, with limited numbers across the country before 1960s. As influenced by rising land price, booming housing demand, and new town movement, CID housing has since proliferated in the US. The 1960s was a watershed for CID development for distinguishing between the main rationale of offering an exclusive life for the wealthy and economizing land use for the middle class.

The middle-class phenomenon has been recorded in Latin America (Coy and Pohler, 2002), the Arab region (Glasze and Alkhayyal, 2002), Malaysia (Zarin, 1999), and South Africa (Jurgens and Gnad, 2002). Security is paramount in Argentina and Brazil (Caldeira, 2000), Mexico (Low, 2001), and South Africa (Landman, 2006). McKenzie (2003) have contended that both supply and demand have driven the spread of CIDs. Fear and security are the main arguments for explaining gated communities.

The institution of CID has earned the same interest as the gatedness, because both are novel in Western society. As far as the institution of CID is concerned, HOA has been widely studied. HOA is "a new form of social and political life" (McKenzie, 1994, p. 177). Compared to several influential definitions of private government, HOA is a type of private government as well (McKenzie, 1994, p. 133 – 134).

CID is often criticized with fragmentation owing to private governance. Le Goix and Webster (2008) argue that the realm of urban governance had been fragmented into micro-territories. HOA is criticized for being a mechanism for enforcing social segregation (McKenzie, 1994). Decision making within CID housing based on share of property right is alleged to be a reversion to the property-based public voting system, which existed 200 years ago and was substituted with one-person, one-vote democracy. Nelson contended that "the rise of the neighborhood association in American life thus might be described as a grand experiment in local constitutionalism" (p. 14). He likewise assessed the CIDs' political effect as follows: "the rise of the private neighborhood association in the second half of the century did more to decentralize the structures of American governance than probably any other political development" (Nelson, p. 24).

1.1.2 CONDOMINIUMS IN CHINA

The volume of CID housing and their residents in America has been largely surpassed by their counterparts in China. Before 1979, Chinese urban residents had been living mostly in public housing. Since the advent of the open-up and reform policy, private housing has dramatically increased with the

development of real estate market and privatization of public housing. According to the 2005 Urban Building Survey conducted by the Ministry of Construction, 81.62% of residential housing in urban China was privately owned, accounting for 8.79 billion square meters (Ministry of Construction, 2006). The majority of private housing in Chinese cities assumes the form of apartment buildings, ranging from skyscrapers with 30 to 40 storeys to six- to seven-storey low-rise buildings with or without a central garden, playground, parking space, and so on. In 2002, for example, 80.08% of private housing located in the urban areas of Jiangsu Province was in the form of apartments (National Bureau of Statistics of China, 2003). A small proportion comprises single-family houses called “villas”, which are equipped with a luxurious clubhouse, swimming pools, tennis courts, and lawns. Only a small number of private housing are the old, single housing built before 1949 or built by peasants in the suburbs, which have no private facilities and amenities shared by a group of homeowners; services such as garbage collection, cleaning, and policing are normally provided by the municipal government.

Majority of private housing in China are gated or differentiated from adjacent housing in the master planning and/or official registry documents, which are pictured as various micro-territories of housing (*xiaoqu*). Homeowners within the same housing complex may choose to manage housing by themselves. However, as a matter of fact, almost all of housing complexes pay property management companies for management and maintenance services such as cleaning, garbage collection, lawn mowing, security, maintenance projects, and so on (*wuye guanli*).

The institution of condominium (*jianzhuwu qufensuoyouquan*) has been gradually developing in China since 1994, when some local governments like Shenzhen and Qingdao issued municipal regulations to address some contents of it. It was formalized under “State Ordinance of Property Management” in 2003 (2003 SOPM hereinafter) and “Real Right Act of People’s Republic of China” issued in 2007 (RRA hereinafter). Moreover, condominium is identified as the only legal institution for the private governance of housing in China. It is stated in the RRA that a homeowner is entitled to the exclusive ownership of the unit, collective ownership together with other unit owners of land lease right, common structure, facilities, and maintenance fund (“common elements” will be used hereafter to denote the properties legally shared by all homeowners), and the right of collective governance of the common elements through either convening in meetings to decide on community issues when needed or forming an HOA with a corresponding board of directors to implement institutionalized governance (HOA and its board of directors are referred to as owners’ assembly [*OA*, *yezhu dahui*] and owners’ committee [*OC*, *yezhu weiyuanhui*] in Chinese). This indicates that homeowners can opt not to form an OA and OC, but they are granted the right of private governance including collective ownership, mutual control of the behaviors, and collective management of housing and living environment within the domain their community. Under the voluntary principle, owners’ committee is not necessarily formed in every condominium. This thesis uses the term “condominium” in loose way to referring to most of the private housing in Chinese cities which are entitled to private governance according to the institution of condominium.

In the case of condominiums in China at present, the institutional aspect is overwhelmingly more influential than the physical aspect. Majority of condominiums in China are gated. This physical form is not a new phenomenon. The residential quarter of apartment buildings has been widely adopted as a

standard public housing model patterned after that in Soviet Russia (Gaubatz, 1995). The traditional courtyard housing was gated as well. Gating enjoys a long history in China. Contrary to its novelty in Western democratic societies, the gated feature is not remarkable in urban China (Webster, Wu, and Zhao, 2006). Instead of the dominant rhetoric of gated communities as being the affluent's tool for escaping from the rest of society, gated communities in China are accessible to all walks of life.

American-based theories cannot explain gating in traditional courtyard houses and work-unit compounds (Huang, 2006). Huang (2005) proposed cultural and political explanation of the gating phenomenon in China. He has argued that the deeply rooted collectivism and the promotion of gating by the state as a tool to control and serve residents mostly contribute to its spread in China.

In the city level, there is no clear segregation between inner cities and affluent suburbs in China (Huang, 2005). This is unlike the phenomenon in many Western countries. The poor and the affluent live within close proximity in both the inner cities and the suburbs. The geographical distance between CID for different social classes in Chinese cities is not so wide as the difference of goods and services within various communities.

In the level of individual communities, the goods and services in adjacent housing estates can be dramatically different. In the high-end market, developers build gated communities with Western architecture, featuring exclusivity and prestige for the rich and upper-middle class (Wu, 2004; Pow and Kong, 2007). Up-market developments such as Purple Jade Villas are especially lavish and represent an extreme segregation (Giroir, 2006). Giroir (2002) metaphored the luxury villas in Beijing as "golden ghetto", with international schools, golf courses, horse-riding clubs and other amenities. Wu (2005) believed that the current function of gating in residential developments in market economy is to ensure the club consumption of goods. Therefore, as Wu (2005) observed, what is novel in China surpasses the physical form of gating.

Private governance of housing in China has attracted remarkable attention because of its political implications for an authoritarian communist country. The formation of OA and OC is often alluded to as representing a great achievement of autonomy by the citizen. "Civil society organization", "grassroots political power", and "middle-class democracy" are catchphrases credited by scholars to the significance of OC. Deng (2004, p. 18) has recognized that OC is "probably the first legal, voluntary, and democratic institution in China".

This unprecedented phenomenon of private governance of housing in China become the subject of this research, partly because of its great meaning for Chinese society mentioned above and partly due to its unresolved questions.

1.2 THE DEVELOPMENT OF RESEARCH QUESTIONS

The condominiums have just existed in China no more than fifteen years in the sense of private governance (since 1994). The private governance of housing in Chinese society is still a phenomenon much under-researched, especially its causes and variations in a vast country.

1.2.1 THE NEED OF A LOCAL EXPLANATION OF PRIVATE GOVERNANCE

The research about CID housing usually assumes that private governance at all times coexists with the private provision of goods and services shared by unit owners within a certain territory. Therefore, the club theory has been widely accepted to rationalize the emergence and spread of the CID institution based on the collective use of common elements and services and the sharing of costs among homeowners (Foldvary, 1994; Manzi and Smith-Bowers, p. 2005; Wu, 2005; Webster and Glasze, 2006; Lee and Webster, 2006). The club theory contends that collective ownership, restrictive covenants, and HOA exist for the efficient establishment and function of housing clubs in the context of homeownership. The public goods and services for housing had been provided by government due to the market failure argued by economists. In CID housing, restrictive covenants provide the non-excludable public goods through tie-in exclusion mechanism, and the collective ownership of common elements is a solution to the uncertainty and opportunism of service provision. HOA is interpreted to function as the democratic voicing of consumers' choice of public goods. Restrictive covenants and HOA regulate mutual externality among unit owners as well. In other words, CID is "an institutional 'innovation', which ensures a market-driven and efficient supply of local public goods for the inhabitants" (Glasze, 2005, p. 224). Therefore, the emergence and spread of private governance of homeowners are thus perceived as a result of the privatization of goods and services (Low, 2006; McKenzie, 2006a, 2006b). In a nutshell, collective property rights, community covenants (or CC&Rs, covenants, conditions, and restrictions), and HOA are presumed to come with the private provision of public goods and services.

The provision of CID institution is taken for granted to be consistent with the interests of the developer, government, and consumers, because the existing research mainly focuses on the United States. CID in America is so influential that the nation has been deemed the original source of globalization of CID housing.

In American CIDs, the developer forms the HOA. "At the outset, however, the developer staffs all board positions with his own employees and customarily retains three votes for every unsold unit, so the developer is effectively in control of the association until nearly the entire project is sold. The developer then presides over a transition period during which elected residents take over all positions on the board of directors and the operation of the development" (McKenzie, 1994, p. 128). It is thus assumed that creating the institution of CID complies with the developers' interest. Therefore, the market actors possess an incentive to create CID institution, as mobilized by profit maximization.

This is true in US history. McKenzie (1994, p. 12) coined the term "privatopia" to characterize the origin of CID in America, representing "a hybrid of Howard's utopian ideas and American privatism". Ebenezer Howard is the most cited pioneer in the field of modern urban planning. Aside from his creative proposal of physical planning of the Garden City, he designed economic and political aspects for his Garden City to keep it running. As far as economic aspect is concerned, the whole Garden City is subject to the central ownership of a sole landlord who provides houses, public facilities, pension, and medical care. All residents living within the Garden City pay rent to support it.

The city's governance is realized by a governing body and the constitution. The governing body is named the Central Council, which serves as the representative landlord and is staffed by the chairmen and vice-chairmen of various departments such as finance, law, engineering, education, and recreation. All department heads are elected by renters.

Howard's utopia was adopted in the United States with adaptations; CID as large as a city (McKenzie, 1994; Blakely and Snyder, 1997). Homeownership was preferred by the developers in pursuit of short-term profit (McKenzie, 1994, p.7). Therefore, the developers disregarded uniform ownership of the whole development for charging rent from unit occupiers. "The dominant ideology of privatism worked against important aspects of Howard's plan" (McKenzie, 1994, p.7).

Howard's idea of city governance, however, was adopted and promoted by big developers. The institution of modern HOAs combining a governing body and community constitution was created and turned into reality by a developer in Radburn, New Jersey in 1928; it was the first modern CID (*ibid.*, p.30). Prior to this, the essential elements of modern CID institution had emerged in America in the form of small housing developments, not in city-sized, master-planned communities as described by Howard. A voluntarily organized HOA, named Committee of the Proprietors of Louisburg Square, was formed in Boston in 1844 to enforce homeowners' covenant for the maintenance of a park. The use of covenant occurred much earlier than HOA to restrict the use of land permanently or within a certain period of time in England. It was then adopted in the United States and tapped by real estate developers to collect funds from residents for the maintenance of private parks, lakes, and other amenities; funds were likewise utilized to keep land usage intact. Common ownership of the land and amenities, together with the covenant, was adopted by developers as a land planning device (McKenzie, 1994, p.9).

In the 1940s, the CID institution was standardized with the promotion of big developers who were strongly influenced by Howard's ideology. After the 1960s, the housing financial industry consolidated the institution's enforcement. The requirement of mortgage insurance organizations contributed to CID's institutionalization and ensured its wide application, as a guarantee that the whole community's housing price would not depreciate because of lack of maintenance and change in the use of land, amenities, and even the appearance of homes.

However, the condominiums in China possess two special characteristics, which are the non-mandatory formation of HOA in state policy and non-coexistence of HOA with private provision of public goods and services. As mentioned in previous section, the condominiums in China are mostly privately served. The establishment of HOA is reflected on the OC's registration in the local housing authority. As a matter of fact, many condominiums have no OC. As demonstrated in Table 1.1, 82.9% of estates in Shanghai as of September 2006 had OC, while merely 8.2% of estates in Zhenzhou had OC. Other cities possessed no more than 50% of estates with OC.