

Limits of Democratic Participation in Property Management

by William D. Sally

Some degree of participation by residents in the management of multi-family housing is now a fact of life. Such participation is most evident in the community associations which govern condominiums and similar multi-owner properties, but it is also found in many residential rental properties.

How far should resident participation extend? In community associations, should residents be involved in every decision or at least consulted before the governing board of directors acts? And in rental housing should the owner, developer, or managing agent seek tenant consensus before enacting policies?

Just as a pure democracy has its practical limitations, so does resident participation in housing management. Too much is time-consuming, costly, and often leads to standoffs and hard feelings. It amounts to an abrogation of an owner's rights to his property.

This discussion will consider the limits of resident participation—first in the case of condominium property, then for rental housing.

CONDOMINIUM HOUSING

Promoted as a carefree way of living, condominiums are also marketed to the public as a democratic community way of life. Owners automatically belong to the community association which operates the property. The number of associations has grown phenomenally, from 500 in 1962 to some 22,000 in 1977.

To acquaint these groups with their role, scores of booklets and manuals have been published. Two of the most recent and comprehensive, issued by the Urban Land Institute (ULI) and the Community Associations Institute, Washington, D.C., are *Creating a Community Association: The Developer's Role in Condominium Homeowners Associations* (1976) and *Financial Management of Condominiums and Homeowners Associations* (1975).

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Community Association Role

The task of governing the condominium or community association is given to the board of directors, whose action or inaction determines the scope and character of resident participation. The legal powers of these bodies are by now well established; the most recent discussion of their powers can be found in volume six of *Real Estate Transactions*, written by Patrick J. Rohan, professor of law at St. John's University Law School, and published in 1977 by Matthew Bender & Co., Albany, New York.

In 1973, many community associations were not fulfilling their functions satisfactorily, according to a ULI report entitled *Townhouses and Condominiums: Residents' Likes and Dislikes*. Surveying 49 projects in the Washington, D.C., area and California, ULI found that only 39% of residents rated the organization and operation of their condominium or homeowners association as "good"; a "fair" rating was given by 42%, and 19% called them "poor."

Among the conclusions reached by ULI was that "there is great dissatisfaction with the way associations are run and their lack of accomplishment. In fact, some residents are so dissatisfied they move out to get away."

Limits to Resident Participation

Personal observation and the comments of colleagues lead this writer to conclude that community associations are often lacking in performance because they tend to overinvolve residents in decision-making.

As a result of promotional campaigns extolling condominium and association living as a democratic way of life, many condominium owners believe they will be involved in all condominium decisions, a notion that many associations do not discourage. Owners expecting to be consulted may be upset or irate if they are not. They may bridle at unpopular decisions, and become gadflies and obstructionists.

Although most boards are empowered to act without consulting residents at large, many board members feel that the concept of the community associations requires resident participation. But too much participation can lead to the board's abdication of its responsibilities.

In the practical sense, resident participation is limited by two factors. First, the majority of condominium owners are content to live privately and "let George do it." As long as they are pleased with their own unit, discover no upsetting problems affecting the common areas, such as poor maintenance or lax enforcement of rules, and enjoy reasonable assessments, they are seldom heard from. Among those who are unhappy with the state of affairs, some may prefer to sell and move, rather than attempt to affect changes.

Second, the declaration and bylaws are usually quite practical in establishing the board's decision-making procedures as well as resident voting. Most declaration drafters are well aware of the perils of 100% democracy, and their documents usually leave matters to the will of the majority, typically 51%. Declarations and bylaws may be amended, but we know of none that require a unanimous vote before action can be taken.

Given these several and often opposing forces—the board's legal responsibilities, the desire to involve residents, and the practical limitations of widespread participation—what can the board do to act responsibly without turning every board gathering into a town meeting?

Communications

Communications comprise the first step—meetings, special notices, and newsletters to inform owners of the association's activities. Lack of communication breeds misinformation and rumors. Board members must realize that their business is the association's business, which every member is entitled to know. Boards that ignore this principle may find themselves confronted with dissident groups who can thwart the association's operations by various means, including lawsuits.

Committees

Appointment of a reasonable number of appropriate committees—concerning, for example, maintenance, budget, architectural, and social concerns—is the next step. Residents should be named to these groups—which provide good training grounds for future board members—on the basis of interest and ability.

Two warnings are appropriate: 1) Committees should be primarily advisory. The board cannot safely delegate its policy-making functions to committees of residents. On the other hand, committee formation is meaningless and committee members are insulted if the board will not listen to and act on their advice; 2) the number of committees should be kept to a practical minimum, and not inflated simply to get more owners into the act. For example, laundry room, swimming pool, and playground committees are often useless groups; their purpose is limited, and membership can lead to a sense of frustration.

Provinces of the Board

As the third step, the board must be firm in recognizing and acting on matters which are clearly within its province, realizing that community consensus is not always necessary. If the board wants a community vote on everything, it should declare a pure democracy and go out of business.

The following are tasks which the board—as representatives of the community—should handle by itself:

- 1) Establish the budget.
- 2) Hire and fire operating and maintenance personnel (unless this is done by the managing agent).
- 3) Select vendors, accountants, and attorneys.
- 4) Pick the insurance carrier.
- 5) Determine the landscaping motif.
- 6) Arrange for decorating and furnishing of common areas.
- 7) Arrange for building repairs.
- 8) Call in the exterminator.
- 9) Set refuse pick-up times.

- 10) Regulate parking.
- 11) Limit children's use of elevators.
- 12) Decide how hospitality rooms are to be reserved.
- 13) Make rules for bicycles and buggy parking.
- 14) Handle deliveries.
- 15) Regulate front door parking times.

The board should not vacillate in its responsibilities. How effectively it acts depends on its strength or weakness. A strong board that functions responsibly can make a major contribution to the association. A weak board that postpones action or acts indecisively is promoting owner disaffection.

Consensus Issues

The fourth and final step requires the board's alertness on issues requiring a consensus, or at least an expression of opinion by the owners at large. These issues typically concern matters affecting the pocketbook or behavior of the owners in a significant way, and may, in fact, involve a change in factors which led them to buy the condominium in the first place.

Examples of such issues are the following:

- 1) *A change in pet rules.* This can be an explosive issue, considering the very strong feelings harbored by pet-lovers and pet-haters alike.
- 2) *Unit maintenance.* Normally community associations do not care for the inside of an owner's home, but some owners are accustomed to this kind of service and expect it in a condominium. Providing such amenities means an increase in cost to everyone. Do the owners want it?
- 3) *Major changes in service, such as security.* When the property is marketed, the budget may provide for only one shift of doorman service, for instance, but the developer may pay for the other two himself. Now that the association is on its own, do the owners want to pay extra for 24-hour doorman service?
- 4) *Switching the management.* The directors may consider do-it-yourself management rather than paying for a professional management company, or vice versa. Which do the owners prefer?
- 5) *Incurring a large debt to expand or remodel a common element.* Do the owners want to bear the expense, for instance, of enlarging the swimming pool or building another one?
- 6) *Increasing the number of directors on the board by amending the declaration.* This may be necessary if the present board is too small, with too few members attending to form a quorum.

These are just some of the questions that a wise board will take to the owners. Beyond such matters, the board will do well to act decisively and quickly in carrying out its duties. To do otherwise is to neglect the well-being of the association and invite dissatisfied residents to form groups that will challenge the board. The result can be wide-scale unhappiness with the association way of life and a degradation of property values.

RENTAL HOUSING

In condominium, cooperative, and other types of community association housing, the concept of democratic participation in property management

has some validity because the residents are owners. But in rental housing, this is not the case. What rights do renters have to participate in management?

The traditional approach allows the owner of the property to do whatever he wishes with it. If the residents (tenants) don't like it, they can move out.

However, conditions have changed. Today if the tenants are dissatisfied, they can form tenant unions, organize rent strikes, sue the owner, and undertake similar actions to prove that their views must be considered. In addition to merely being "considered," some tenants want to be actively *involved*. They want to guide the landlord as he decides how to paint the halls, make bicycle parking rules, and deal with late rent.

Tenants Rights Movement

These and other demands are part of the tenants rights movement which began in the mid-1960s. In September 1969, the Urban Research Corporation of Chicago issued a report of 89 tenant group activities in 50 cities. The paper covered tenants in low-income and public housing, as well as those in middle and upper-income areas. Grievances are summarized in the following table:

	<u>Middle and Upper Income</u>	<u>Low Income</u>	<u>Public Housing</u>
Poor maintenance	8%	44%	12%
Rent	16%	9%	9%
Lack of tenant control	8%	1%	9%
Inadequate security	2%	3%	6%

According to an article in the *New York Times* (December 6, 1976), the middle class that was rising up angry in 1969 is still at it: "While tenant activism and rent strikes were largely slum-area phenomena a decade ago, today they are a conspicuous part of the city's middle-class life as well." In New York, the largest and most militant tenant organization—the Metropolitan Council on Housing—regularly sponsors conferences on tenant activity.

Landlord-Tenant Code

One result of the wild-to-mild flurry of tenant activism has been an attempt to formulate a landlord-tenant code. The American Bar Foundation developed a tentative model Residential Landlord-Tenant Code under the direction of professor Julian H. Levi at the University of Chicago Law School. Originally written in 1969 in an attempt to outline obligations of both parties, the code has undergone several revisions over the years and has yet to be formally acted upon.

Role of Federal Government

Perhaps the greatest impetus for tenant participation in management has come from the federal government, which has made clear just how far it ex-

pects owners to yield to tenants, at least as far as federally-assisted housing is concerned. In its Suggested Housing Management Agreement, the Department of Housing and Urban Development (HUD) states:

"The Agent will establish and follow an employment policy which affords residents of the Project maximum opportunities for employment in the management and operation of the Project" Later, the Agreement says: "The Agency will encourage and assist residents of the Project in forming and maintaining representative organizations to promote their common interests"

In other words, owners are obligated to organize the tenants and involve them in the management of the project. Nothing could be plainer.

HUD has even published a small brochure titled "*Why Tenant Organizations—A Role for Residents of Rental Housing*" (September 1972). Aimed at self-help type roles, the brochure suggests that tenant organizations can help control vandalism, aid in security problems, and "make HUD-assisted housing a better place to live." Many of the accomplishments cited fall into the category of cooperative business ventures, and HUD concludes that these tenant groups can make for better communities.

Co-Op City Experience

But *can* tenant organizations and tenant participation in management indeed improve communities? More than likely, such participation will create more problems than it solves.

For those who see nothing mysterious about property management, and believe that any intelligent person can master the trade, the experience of Co-Op City, a 15,000 unit apartment complex in the North Bronx section of New York City, may be instructive.

Technically, the development is a cooperative, but since tenants can only sell their shares back to the corporation they have no effective equity interest. The project is subsidized under New York State's Mitchell-Lama program, with tenants paying below-market rents.

According to the *Wall Street Journal* (July 1, 1977), when the housing authority raised rents to cover a \$12 million yearly deficit, the tenants went on strike. After 13 months, the state negotiated a settlement, through which the tenants took over the project. They were given six months to end the deficit by economizing while keeping rents at the old level.

The tenants couldn't do it. They stopped making debt service payments to the mortgage holder, and the project is on the verge of a default crisis. The city's answer is an \$18 million appropriation to help out.

Whether or not this comes to pass, the point is that tenant management could work no miracles. Perhaps in this case the problem was so great that nothing but a complete restructuring of the development—including a rent raise—would do the trick. But when tenants are oblivious to the facts of economic life—including the necessity for a rent increase—their efforts are doomed.

The unfortunate fact is that many tenants believe that rent raises aren't necessary and that tenant management can save the day. Co-Op City shows otherwise.

Tenant Limitations

What is it that makes tenant organizations unsuited for participation in management? Consider first the HUD requirement that tenants be hired to run the property. HUD acknowledges that ability is important, but it requires the manager to train residents who are not otherwise qualified. This puts an added burden on the owner, and means that the other residents may not be getting the best possible service.

There are other reasons why tenant involvement in the operation of the property is not a good idea. Tenants who work in management, whether as clerks, rental agents, or maintenance personnel, may pick up information that leads to rumors detrimental to the property. They may feel that the development is theirs and may, in effect, give the store away by doing favors to other residents. Firing them for incompetence may be a further problem. They may have supporters who want them reinstated, or they may engage in sabotage as way of retaliation. How do you deal with such a person—refuse to renew the lease? That can lead to further trouble.

Hiring tenants to run the management end involves many of the same problems inherent in nepotism and conflict-of-interest situations. If the owner has any choice, he will draw a distinct line between his employees and his tenants.

The HUD requirement for fostering tenant organizations leads to other perils, especially when such groups feel they must be consulted in the management of the property. Tenant groups seldom know about the financial condition of a property, and make demands which are not related to reality. Even if the tenants were exposed to the property's financial data, chances are slim that they have enough professional knowledge to understand them.

Taken together, the HUD requirements may lead the tenant organization to insist that it determine how much security is provided, what the decorating policy ought to be, when appliances must be replaced, or how late-paying tenants should be dealt with. The owner is losing his rights to manage his property if he yields to such demands.

Erosion of Owner's Rights

The courts have supported the erosion of the landlord's private property rights in favor of giving tenants more of a say in management. Writing in *Real Estate Review* (Summer 1971), Jerome G. Rose, associate professor of urban planning at Livingston College, Rutgers University, pointed out that in 1970, 58% of mortgage loans had federal participation, and that: "Where the federal and state governments place power, property, and privilege behind a landlord, the relationship causes the landlord to lose much of his freedom of action as a private individual and subjects private landlords to many restrictions of the public landlord."

Rose cites the case of *Colon v. Tomkins Square Neighbors* (1968) involving an urban renewal housing project with FHA mortgage, tax exemptions, rent supplements, and HUD sponsorship. The courts found that the extent of federal involvement rendered the landlord responsible to the tenants and required the creation of a landlord-tenant relationship.

Rose concludes that the new legal decisions have the "potential capacity of transforming the landlord-tenant relationship from a private agreement between private parties to a quasi-public relationship subject to the principles of fair play incorporated in the United States Constitution."

It is very likely that such court decisions, along with administrative actions by state and federal agencies, will continue to abet the trend toward more tenant participation in property management—regardless of the inherent limitations of such participation.

Forestalling Quasi-Takeover

Therefore, it is in the owner's best interests to forestall the day of a tenant quasi-takeover by acting quickly to avoid situations that lead to tenant discontent and the formation of tenant organizations. Here are some suggestions:

- 1) Give tenants the best possible service for what they pay. Generally, if this is done, tenants will be content.
- 2) Hire professionals to manage the property and insist on ability as the primary requisite.
- 3) Keep rules and regulations reasonable and explain them well in advance to tenants. Tenant education should begin with the lease application. Let them know in advance that they cannot paint their apartment any color they choose, have pets (if this is a no-pets building), play the stereo at all hours, or store a junk car in the parking lot.
- 4) If it will enhance the life-style of the building, help form social groups, such as bowling leagues, hiking clubs, ski tours. This is a good way to demonstrate personal interest in the tenants.
- 5) Be wary of cutting back on services, which can cause tenant resentment. Find other ways to raise the funds to provide services that tenants have been getting.
- 6) Most importantly, deal with tenants individually, not in groups. If confronted with a group, explain that each tenant signed the lease individually and any problems will be discussed in the same manner.

CONCLUSION

Property management is a business, and must be run as such. No business can run itself properly if it must await word from all of its customers and employees before action is taken. Responsibility and authority for decision-making must be delegated. Some well-meaning property owners may feel that democratic participation in management is in tune with the times and can head off trouble, but experience shows that the result is often stalemate, if not outright anarchy.

While the rights and expectations of residents should be taken into account, management must reserve the right to make the final decision.