THE OWNERS’ COMMITTEE IN CHINA: A NON-OWNER OWNED PUPPET?

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Abstract

The Owners’ Committee in China, ever since its creation in the late 21st century, has been unpopular and unknown to most private property owners in China. Ideally, a well-functioning Owners’ Committee should benefit the property owners and serve to be the entity acting in the best interests of the owners. However due to political, cultural, as well as legal factors, the establishment of Owners’ Committees in China has yet to become a typical practice, and Owners’ Committees have yet to become entities that effectively safeguard property owners’ interest. There is scarce scholarly research in both Chinese and English regarding how the law can facilitate the formation and operation of the Owners’ Committees. This Article utilizes previous research findings on this topic and addresses various problems of the Owners’ Committee, and proposes several solutions on how the reconstruction of the current legal mechanism can facilitate a well-functioning Owner’s Committee in China.

I. INTRODUCTION

Currently, the problem of private apartment and home owners being unable to participate in the management of their living environments has caused many problems in Mainland China. Many private property owners in Mainland China are not satisfied with the services provided by their designated realty management companies. As early as 1998, the owners at Liwan Square in Guangzhou, a luxurious apartment at that time, successfully initiated an election of their Owners’ Committee. However, such a success was not without a struggle, since the entire process was interfered by the realty management companies and also by government officials whom the owners believed to be sided with realty management companies. The successful election of the Owners’ Committee is nevertheless another step toward the self-autonomy of the property owners of their own properties.

Theoretically, according to the Regulation on Realty Management, private property owners can form an ‘Owner’s Committee’ which in turn should act in the best interest of the owners by supervising the service quality of the realty management companies.

as well as acting on the owners’ behalf in dealing with any disputes that might arise between the owners and the realty managements. In reality however, this mechanism often does not prove to be useful, and the rights of the owners are often infringed upon without any remedy. Such a phenomenon correlates with the Chinese political culture in that the government often takes a dominant approach towards civil matters and asserts control to almost every civil activity. While such a problem might be particularly conspicuous in a state like China in which the government is often overkeen in the involvement of civil affairs, and thus impedes the development of self-autonomy of organizations like the Owners’ Committee, similar problems also exist in market oriented countries such as the U.S., only in these regions, self-autonomous organizations perish not mainly because of third party interference, but due to inadequate funding. As a result, the emergence of Owners’ Committees to a certain degree is a challenge to the existing political institutions. With the rising of private property prices in China, more property owners are troubled by this problem and are quite helpless about it. Expensive property owners who have spent their lifetime savings on their property are usually unhappy with ‘management arrangements that are imposed upon them by developers and the state.’

This Article addresses the issue by exploring ways to incentivize the owners to form and maintain functional Owners’ Committees. The private properties (shang pin fang) referred in this Article are apartments, or flats, or a number of houses collectively developed by a single developer. These properties are ‘horizontally’ subdivided as well as ‘vertically’ subdivided, meaning that land titles are linked with a part of defined space or ‘cubic area,’ and ‘which is not grounded on the surface layer of the earth.’ Such properties are governed by Chapter VI of the Property Law of China regarding ‘Owners’ Partitioned Ownership of Building Areas.’

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5 See id. ch. 2.
8 Read, supra note 1.
9 Id. at 33.
12 Id. ch. 5.
II. BACKGROUND AND THE PROBLEMS

Similar to Chinese citizen’s involvement in political change, the Chinese people seem to be lacking the desire and awareness in exercising their rights of voting to improve their living conditions. Although for the sake of economic development, China has been continuously enacting laws with regard to emerging economic and financial innovations, but it still has not strived to improve its rule of law environment which is essential for these laws to be functional and applicable, e.g., the Property Law specifically states that ‘The owners may establish an owners’ assembly and select an [O]wners’ [C]ommittee,’ however, such a provision can hardly be implemented in judicial practice and this allows such a provision to further deteriorate the authority of the law in the mind of the general public.

Social science research on U.S. society suggests that the dismantling of close relationships among families, communities, and neighborhood, has rendered an American civil society that is gradually falling apart. Despite the fact that such research is not empirical in the economic sense, it has nevertheless received wide recognition and it is the view of this Article that the same conclusion can be drawn by observing the Chinese society, i.e., the disruption of the closeness of relationships in China will strongly contribute to the breakdown of the Chinese civil society. Thus it has become more important to study efficient means to motivate the function as well as operations of organization such as the Owners’ Committee that is capable of connecting people.

In China before 1998, commercial residential building was still an unfamiliar concept to the general public, and during that period, and the time before, the domiciles where Chinese people live were the connectors linking with neighbors, families and communities, and the relationships between urban Chinese neighbors have been regarded as being closer than western familial relationship. At that time, Chinese people needed to rely on each other more, as the economy had not yet experienced rapid growth and the levels of individual wealth

11 See id. art. 75.
13 Junhua Chen, Fei Guo & Ying Wu, One Decade of Urban Housing Reform in China: Urban Housing Price Dynamics and the Role of Migration and Urbanization, 1995-2005, 35 HABITAT INT’L 1, 1 (2011) (“the abolition of the policy on the provision of welfare housing in 198 is an important milestone in Chinese urban housing reform, which resulted in the market-oriented urban housing provision system.”).
had not yet increased.\textsuperscript{15} Thus, during these times people depend on each other in order to possess the security that can make them feel safe. This Article does not tackle with the more macro problem of the rule of law situation in China, but assumes that the rule of law conditions in China will remain as the current state. Namely, this Article addresses the problem of Owner’s Committee in its status quo, and offers viable solution for current property owners to effectively exercise their rights.

\textbf{A. Information Asymmetry}

Essentially, in an ideal centralized planned economy the people are under the overall care of the government, thereby creating little demand for the need of information by the general public.\textsuperscript{16} In theory, information has little value, if any, for the people if the possession of such information cannot improve their living conditions. The passive role of the people suggests further that under certain predetermined conditions, information asymmetry might not be a problem at all. However, information, while not posing much value to the \textit{hoi polloi}, nevertheless can be vital to the success of the government’s overall planned economy strategy. This is due to the fact that government is not one entity alone but composed of many participants, or sub-entities.\textsuperscript{17} This division creates competition and therefore makes information valuable, and whenever there is value in information people tend to hide and protect it for the advancement of their own interests.

With regard to the relationship between owners and realty managements companies in China, one of the major problems lies with the supervision. In this rather controversial relationship where on the one hand one party consists of many sporadic individuals with legal capacities which are collectively known as owners while the other party only has one legal entity; the latter provides services to the former while collecting a fee in return for their services. The function of such a mechanism shares great similarities with that of the relationship between the people and the government. Without restricting the power of the government, there is a greater tendency towards abuse of power, despite the fact that these powers come from the people. A Chinese scholar has described the relationship between the owners and the realty management companies in China as a relationship of power asymmetry, and has acknowledged that the realty management companies possess the opportunity and capability

\begin{footnotesize}
\begin{itemize}
  \item\textsuperscript{15} Chan, \textit{supra} note 14, at 9 ("Chinese government throughout the centuries have provided very little to the citizens in terms of welfare protection and services. The welfare needs of individuals and groups were handled by themselves or their kinship lineage networks.").
  \item\textsuperscript{17} Id. at 60.
\end{itemize}
\end{footnotesize}
of positing themselves above the owners. Since there are no viable mechanisms currently available to restrict the power of the realty management companies *de facto*, it is understandable why Chinese property owners often felt helpless when they are unsatisfied with the services provided by the realty management companies. Legally speaking, article 25 of the Regulation on Realty Management provides ‘[a] sales contract concluded by the construction entity and the realty buyer shall include the contents stipulated in the prophase realty service contract.’ This provision suggests that before the handling over of the developed property to the owners, the house purchasers need to passively accept the fact that the real estate developers will select a realty management company for them. This marks the beginning of ‘information asymmetry’ since by law, property purchasers cannot choose a prospective management company during these early stages. The owners can, however, form an Owners’ Committee which can exercise the right of ‘[s]electing, employing and dismissing a realty service enterprise’ on behalf of the owners. In addition, the Owners’ Committee shall exercise a variety of duties as prescribed by the regulation.

However, there lies a problem in the inequality of numbers between the multiple owners and the single entity of the realty management company. The Owners’ Committee might not be the best means of supervising the services of the realty management company much less safeguarding the rights of the owners. According to the Regulation on Realty Management, the ‘owners’ committee shall consist of all the owners within the realty management area.’ Namely, if one realty management company has been hired to manage a particular residential housing, all the owners within that particular area can only form one Owners’ Committee despite the fact that most residential units are very independent themselves even though they are within the same building. This results in neighbors having very differentiated needs, therefore it is extremely unrealistic to establish one Owners’ Committee in accordance with only one residential area managed by one realty management company; such a layout needs to be replaced by a more flexible mechanism where legal restrictions vis-à-vis the number of Committees formed should be kept to the minimum. Usually, one property management company often manages a residential area with hundreds of thousands of residents,

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18 Qin Anji (覃安基), *Woguo Shequ Guanli zhong Cunzai de Zhuyao Wenti jiqi Jiejue Tujing (我国社区管理中存在的主要问题及其解决途径)* [Major Problems and Countermeasures to China’s Community Management], S Chengshi Wenti (城市问题) [URB. PROBS.] 77, 78 (2012).
20 See id. art. 11.
21 See id. art. 15.
22 See id. art. 9.
and in order to maximize the owners’ interests as well as efficiency, more than one Owners’ Committee should be allowed within one residential area.

B. Reluctance in Forming Owners’ Committee

The fact that the interests of individual owners cannot be aligned has created many obstacles in the formation of Owners’ Committees, thus rendering this self-autonomous organization very unpopular among Chinese residential areas. It is not difficult to imagine that the concern of one vertical unit located at one end of a building might be very different than the other unit located on the other end. The former, if located closer to the streets, might pay more attention to noise problems than the ones located in the center of the residential areas. Moreover, it is possible that owners on different levels of the building also have different needs. One of the classical examples is that owners living on the first or lower floors refuse to pay the same amount of property management fees as that of owners living on the higher floors since they have very small demands for using the elevators. The Owners’ Committee evidently cannot align the interests of all of the owners and it lacks the authority and legality of that of a government to coerce those owners to follow its rules and decisions that are against their best interests. Thus, it is necessary to examine whether a better mechanism can be utilized to maximize owner’s interests to the greatest extent.

C. The Need for Self-Autonomy

Although the owners lack the incentives in the formation of Owners’ Committee, it is imperative to examine whether such a demand or need was nonexistent or that it was suppressed by other factors. Existing literature suggests that there has been continuing debate with regard to how the homeownership affects the owners’ motivation participating in political activities. Conventional views suggest that ‘conservative social and political attitudes’ are the outcome of the homeownership. These views are ‘widely held by

23 Official statistics with regard to the percentage of residential areas that have formed Owners’ Committee are not available. However, large amount of circumstantial evidence with regard to the low rate of the formation of Owners’ Committee suggest that Owners’ Committee does not enjoy much popularity in China. See Jiang Hong (姜洪), Yezhu Weiyuanhui Haineng Huo Duojiu? (业主委员会还能活多久？) [How Much Longer can Owners’ Committee Survive?], JIANCHA RIBAO (检察日报) [PROCURATORIAL DAILY]. Aug. 3, 2015, at 5, available at http://newspaper.jcrb.com/html/2015-08/03/content_192546.htm.


25 Read, supra note 1, at 41.

contemporary social theorists across a wide political spectrum, while this theory is still subject to the challenge of the findings of empirical studies that will take into account many factors and not merely hypotheses, it nevertheless is certain that the correlation between homeownership and the willingness to vote is positive. Namely, homeowners are more likely to participate in voting activities than renters when their residential harmony is at stake since ‘homeowners tend to be more politically active than non-owners.’ This finding sheds light on our discussion regarding whether the property owners in China are indeed indifferent with having an Owners’ Committee or if this demand for engaging in community activities has been de facto subdued. At this stage the answer to this question is likely to be the latter. In summary, as will be discussed in the later part of this Article, the legal procedures in forming an Owners’ Committee are rather complicated and involve multiple processes requiring the involvement of many parties including the government. This vexing experience is time consuming and can ultimately be effortless. Consequently, it seems the law purposefully creates hindrances having the effect of suppressing the formation of the Owners’ Committees.

D. The Realty Management Companies

The realty management companies in China do not usually enjoy a good reputation. On July 26, 2014, a group of owners of Wanda Gong Guan, an expensive residential community in Wuhan, occupied a busy main street in Wuhan complaining and protesting the realty management companies of Wanda Gong Guan and the low quality of the buildings. The owners, great in number, all drove luxury cars which caused severe traffic jams. The incident caught the attention of the media nationwide, and such incidents are not unseen before on Chinese media. Because of the large population and public ownership ideology, properties with a single ownership are not popular in China. On the other hand, skyscraping apartments or flats are more popular choices for both developers and the property purchasers. As a result of this, realty management companies are needed to maintain the daily administration of residential areas; the problems lie in the failure of effective supervision of these companies.

27 Id.
28 Id. at 1589, 1603.
29 Id. at 1589.
30 Read, supra note 1, at 41.
E. Factionalism and the Corruption of the Owners’ Committee

Even with the establishment of the Owners’ Committee, moral hazard is another problem that might encroach upon the mechanism. The first concern is that the Owner’s Committee might become the puppet of the realty management companies. This is because, compared with the hundreds of thousands of property owners, there is only one realty management company, which is in a better position to cast influence over the Owners’ Committee and/or its leaders. Once the Owner’s committee has been infiltrated by members of the realty management company, the mechanism will be compromised and dysfunctional.

The second concern is that members of the Owners’ Committee might within itself have disagreements and form differentiated views toward daily administration of the Committee as well as diversified approaches toward solving problems, thus causing factionalism. The studies of the American union factionalism suggest that when it comes to the construction of an operable system of a small group of people striving to achieve a bigger goal, it is important to firstly consider “[w]hat internal political rights of individual union members should be protected and how they can be protected without destroying the integrity, independence, and power of the organization.” Indeed, a small self-autonomous organization, such as an Owners’ Committee, or a union, is itself a political system, however small it is. Given the fact that Owners’ Committee is a political system, it can be concluded that the current laws have failed to take up any measures that will tackle with the factionalism issues presented within these small political groups. But even though such a problem has caught the attention of the academia, it nevertheless remains to be a problem unresolved. While it is suggested that the problem can be summarized as the reconciliation of the dichotomy of majority rule and minority rights, an efficient method has yet to be seen that tackles the factionalism problem with unions. In order to facilitate and to popularize the formation of Owners’ Committee, the problem of factionalism must be addressed.

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32 Shi Fayong (石发勇), Yezhu Weiyuanhui, Zhun Paixi Zhengzhi he Jiceng Zhili—Yi Yige Shanghai Jiequ Weili (业主委员会，准派系政治和基层治理——以一个上海街区为例) [Owners’ Committee, Sub-factionalism Politics and Fundamental Governance—Using Shanghai Street Blocks as an Example], SHEHUIXUE YANJIU (社会学研究) [SOC. STUD.] 7-10 (2010).
35 Id. at 208 (“A Union is essentially a political structure.”).
36 Id. at 207-14.
37 Id. at 214 (“The problem of reconciling majority rule and minority rights in any democratic political structure is complex. There can be no definitive answers.”).
III. THE ANALYSIS

A. The Current Mechanism

The Chinese real estate developers lack the incentives to provide quality services to potential housing purchasers. This can be partially evidenced by the scandals within the real estate industry in that low quality buildings have been reported to have collapsed. While the focus of this Article lies not in ensuring the construction of quality buildings, the corrupted sources of the developers nevertheless offer certain implications as to why today’s realty services are not properly regulated and have reached a condition that can be described as chaotic.

1. The Pre-completion Contract

Currently, according to the Regulation on Realty Management and the ‘Interpretation of the Supreme People’s Court on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Realty Services,’ the assignment of the realty service company is initially decided by the real estate developers. The real estate developer is entitled by law to choose a realty management company at its discretion, and upon the agreement of the formation of the assignment, concluding a contract known as the ‘pre-completion realty service contract.’ This contract has binding legal effects on the property owners who will later occupy the property for either living or business purposes. Namely, the owners do not possess an option in selecting a competitive realty management company that will act in the best interests of the owners, and the owners themselves are not equipped with feasible measures to safeguard themselves in any conflicts that might arise with the realty management companies. The Realty Service Interpretation specifically states that the court will not support the claims of the owners if they object to the ‘pre-completion’ contract because they were not a party to the contract. Such a legal arrangement is rather far-fetched since it is very likely to have breached the equal principles as prescribed by the Contract Law, which states that neither party shall forcibly apply its will on the other.

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38 Zuigao Renmin Fayuan Guanyu Shenli Wuye Fuwu Jiufen Anjian Juti Yingyong Falü Ruogan Wenti de Jieshi (最高人民法院关于审理物业服务纠纷案件具体应用法律若干问题的解释) [Interpretation of the Supreme People’s Court on Several Issues Concerning the Specific Application of Law in the Trial of Disputes over Realty Services] (promulgated by Sup. People’s Ct., Apr. 20, 2009, effective Oct. 1, 2009) (Chinalawinfo).

39 Id. art. 1.

40 Id.

41 Id.
party. However, in this case the will of the developers and the realty service firms have been forcibly applied to the property owners.

In furtherance of this analysis, according to article 52 of the Contract Law that ‘a contract shall be null and void’ when ‘malicious collusion is conducted to damage the interests of the State, a collective or a third party.’ It appears that the pre-completion contract formed between the developer and the realty management firm could possibly fall into this category since there is no exterior supervision system on the agreement between these two parties and the moral hazard is high. If admissible evidence indicates that the developers received benefits in exchange in assigning the realty service to a particular firm, then such an arrangement constitutes ‘malicious collusion’ and thus such a contract is null and void from the beginning of its formation.

In arguing against article 1 of the Realty Services Interpretation one can raise the following objections. The first objection is based on the equal principle as stipulated by the Contract Law, and the second objection is from the perspective of the nature of the contract. In the first case, if the pre-completion contract is problematic because it violates the equal principle of the Contract Law de jure, then the more readily available remedial measure is for the Supreme People’s Court to issue another judicial interpretation justifying why the pre-completion contract has not violated the equal principle, which is unlikely because the owners as a party who bears the consequences of the contract cannot be present when the contract is signed and that the contract does not contain any of their negotiated terms, thus making the position of the two parties unequal de facto. In addition, another legal measure that can align the pre-completion contract with the requirement of the equal principle of the Contract Law is that article 1 of the Realty Services Interpretation can be revoked in order to follow the doctrine of the hierarchy of ranks where low rank laws such as judicial interpretations cannot conflict with laws with higher rank such as the Contract Law. This measure is more feasible as compared with the first option in which a new judicial interpretation has to be issued.

On the other hand, if article 1 of the Realty Services Interpretation is problematic because individual parties formed contracts in pursuant to this rule have engaged in acts that will lead the contract to be declared as null and void, then article 1 of the Realty Services Interpretation itself can be left intact since this provision is not in violation of a law with a higher rank, nor has it violated any dominating legal principles, therefore the real estate owners will have

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43 See id. art. 52.
44 Id.
to provide admissible evidence which can prove that moral hazard was in place between the developers and the realty management companies assigned by the developers. This is unlikely because usually the number of parties involved in the claim or complaint is many, and the owners will have to form as one entity and sue in the form of class action lawsuits. During this process the problem of free riders will be inevitable, further reducing incentives of the owners wishing to bring the matter in court.

One may argue that the Regulation on Realty Management has made efforts in the avoidance of hurting the interests of the owners by requesting the developers to ‘formulate a temporary management covenant to stipulate, according to law, the use, maintenance and management of the relevant realty...’ and various other related matters, and by stipulating that the temporary management covenant shall not ‘infringe upon the legitimate rights and interests of the buyers of the realty.’ However, such an arrangement is not enforceable since there are no rules with regard to the consequences if the developer does not abide by the regulation, thus harming the property owners. What are lacking here are not rules stating universally acknowledged principles such as that one shall not infringe upon the rights of the others, but a mechanism that is operable under the current rule of law environment in China. If enough evidence indicates that a violation of a regulation exists, one can use this evidence as ground in court. However, in the case of this Article since the contract has been concluded between the developers and the realty service firms, both parties are assumed as private entities, the court might easily reject the claim brought by the owners since the owners are not a party to the contract and that the owners are not allowed to access the contracts formed between the realty service firms and the developers. As a result, the current mechanism fails to address what will happen if the covenant concluded between the developers and the realty management firms hurts the interests of the owners.

One explanation that can justify article 1 of Realty Service Interpretation is that, by purchasing the contract, the owners have implicitly agreed that the developer was acting as their agent. According to the ‘General Principles of the Civil Law of the People’s Republic of China’ (GPCL), ‘[a]gency shall include entrusted agency,'
statutory agency and appointed agency."\(^{47}\) The type of relationship
between the developers and the owners obviously does not belong to
these three types of agencies since the owners were not there to entrust
the developers to act on its behalf, and the appointed agency require
‘the power of agency as designated by a people’s court or the
appointing unit.’\(^{48}\) The statutory agency, on the other hand, refers to the ‘guardian of a persons without or with limited capacity for civil conducts,’\(^{49}\) which similarly does not apply in this case.

2. The Owners’ Committee
By the same law that governs the pre-completion contract between
the real estate developers and the realty management companies,
article 1 of the Realty Services Interpretation states that the contract
formed between the realty service firms and the Owners’ Committee
or assembly is binding on the owners.\(^{50}\) However, the owners also
have the right to replace the realty management companies as
designated by the real estate developers. Looking back, it can be
observed that the Property Law was enacted on March 16, 2007,\(^{51}\) and
the Regulation on Realty Management was amended on August 26,
2007. Both of which however, are promulgated on October 1, 2007.\(^{52}\)
This indicates the state’s intention of aligning the content of the
regulation with the Property law. The previous version of the
Regulation on Realty Management dates back to 2003, article 11 of
which lists six duties (which are more likely to be rights), that are
exercised by the owners’ assembly.\(^{53}\) The 2007 amendment changed
this provision, subdividing the lists of matters (previous known as
duties) into seven items, which is the original language of article 76 of
the Property Law.\(^{54}\) The only difference is that, within the same

\(^{47}\) Minfa Tongze (民法通则) [General Principles of the Civil Law] (promulgated by the Standing
\(^{48}\) Id.
\(^{49}\) Id. art. 14.
\(^{50}\) Zuigao Renmin Fayuan Guanyu Shenli Wuye Fuwu Jiufen Anjian Juti Yingyong Fallü Ruogan
Wenti de Jieshi (最高人民法院关于审理物业服务纠纷案件具体应用法律若干问题的解释)
[Interpretation of the Supreme People’s Court on Several Issues Concerning the Specific Application of
Law in the Trial of Disputes over Realty Services] (promulgated by Sup. People’s Ct., Apr. 20, 2009,
effective Oct. 1, 2009) art. 1 (Chinalawinfo).
\(^{51}\) See Wuquan Fa (物权法) [Property Law] (promulgated by Nat’l People’s Cong., Mar. 16, 2007,
effective Oct. 1, 2007) (Chinalawinfo).
\(^{52}\) See Wuye Guanli Tiaoli (物业管理条例) [Regulation on Realty Management] (promulgated by
\(^{53}\) Wuye Guanli Tiaoli (物业管理条例) [The Regulation on Realty Management] (promulgated by
\(^{54}\) Wuquan Fa (物权法) [Property Law] (promulgated by Nat’l People’s Cong., Mar. 16, 2007,
effective Oct. 1, 2007) art. 76 (Chinalawinfo).

The following issues shall be commonly decided by all owners:
(1) Formulating or amending the rules of procedure for the owners’ assembly;
(2) Formulating or amending the stipulations on the management of the building and its affiliated
facilities;
provision, the Property Law offers the procedural guidelines with regard to what percentage of owners must consent before such listed matters can be exercised, while the 2007 Regulation on Realty Management adopted a separate provision to serve the same purpose.55

According to both versions (2003 and 2007) of the Regulation on Realty Management, matters with regard to any refinement of the buildings and its affiliated facilities shall be exercised with the consent of ‘the owners who exclusively own 2/3 or more of the total area of the building and who account for 2/3 or more of the total number of the owners,’56 while other more daily administrative matters only requires 1/2 owners of the same qualifications.57 The 2007 amendment does not seem to have changed much except that it places more emphasis on the owners and restate, albeit implicitly, that the owners assembly is only a meeting which is needed to express the wills of the owners, and not vice versa. In addition, the 2007 amendment changed the language of ‘realty management firms’ into ‘realty service firms.’58 This indicates that these companies no longer enjoy monopolized privileges as they once did and now have to face the market competition.

The current mechanism offers the property owners in China with rights, obligations and rather vague procedures in safeguarding their properties. On the other hand, such a mechanism has failed to incentivize the owners in engaging in the different activities as envisioned by the laws or regulations. Namely, although the laws exist to conceptualize potential events or conflicts that might take place in the real world, and made efforts in forming a legal culture, albeit on paper, with regard to what should be the rules to follow. Why not follow the laws if everyone affected by the law will be better off? This is because that a law will not be functional if it fails to incentivize. In the case of the Owners’ Committee, the related laws and regulations have failed to address (1) what motivate the owners to form the

(3) Selecting the owners’ committee or changing the members of the owners’ committee;
(4) Selecting or dismissing the real property service enterprise or any other manager;
(5) Raising or using the funds for the maintenance of the building and its affiliated facilities;
(6) Rebuilding the building or any of its affiliated facilities;
(7) Other important issues concerning the common ownership and the right to common management.

The decisions related to the issues prescribed in Item (5) or Item (6) of the preceding paragraph shall be made by the owners who exclusively own 2/3 or more of the total area of the building and who account for 2/3 or more of the total number of the owners. On the decisions related to any other issue prescribed in the preceding paragraph shall be made by the owners who exclusively own half of the total area of the building and who account for half of the total number of the owners.59

56 Id.
57 Id.
Owners’ Committee and safeguard its rights against potential infringement of the realty management firms; (2) how is the operation of the Owners’ Committee guaranteed; (3) what will happen and which supervisory entity will step in when the Owners’ Committee no longer serves the owners but, instead only seeks its own benefits or even forms an alliance with the realty service firms? What is the most optimal mechanism for the Owners’ Committee to supervise the realty management firms? Thirdly, within the Owners’ Committee itself, it is still unclear as to whether a mechanism should be established to address the factionalism issues which have been proven to hinder the operation of the Owners’ Committee.

In addition, according to the 2007 Regulation on Realty Management, only one Owners’ Committee needs be established within one realty management area.59 The division of the realty management needs to take into consideration with regard to facilities, buildings, and communities construction, and the specific measures that shall be enacted ‘by the provinces, autonomous regions, and municipalities directly under the Central Government.’60 Such a stipulation is rather vague in terms of its ambiguity. The purpose of this provision is in good faith since it takes into account the cultural and economic needs of the different provinces, autonomous regions, and municipalities directly under the Central Government; the idea of using only one regulation to govern each and every provincial level governmental entity not only is problematic but also unrealistic. However, regulations are not laws, they are but normative documents which serve regulative functions. And regulations are not the products of National People’s Congress and do not reflect the will of the people in large, even though the regulations themselves follow the same law that governs the legislation process.61

B. The Analyses

The problems between the owners, the owners’ committee, and the realty management firms are twofold.

Firstly, with regard to the relationship between the owners and the owners’ committee, the questions that remain unanswered by the current mechanism include: How to best incentivize owners to form an Owners’ Committee? Who is going to provide the funding for the daily administration of the Owners’ Committee? If the Owners’ Committee is there to monitor the realty management firms, what is the proper mechanism for supervising the Owners’ Committee? Namely, what measures can best prevent the Owners’ Committee from

59 Id. art. 9.
60 Id. art. 11.
becoming another realty service firm which does not act in the best interest of the owners?

Secondly, with regard to the relationship between the Owners’ Committee and the realty management firms, the question that remains unanswered by the current mechanism is: what will prevent the Owners’ Committee from compromising the interest of the owners in favor of the realty management firms?

1. Owners’ Committee vs. the Government

With regard to the relationship between the owners and the Owners’ Committee, the key lies in the great difficulty in the formation of the Owners’ Committee. In order to establish a functional Owners’ Committee, it is necessary to incentivize the owners’ so that they are convinced it will be their best interest by forming the Owners’ Committee.

The key factor that subdues the owner’s motivation in the formation of the Owners’ Committee lies within the current version of the Regulation on Realty Management. According to article 10 of the Regulation, owners are required to form the Owners’ Committee under the guidance of one of the following entities: (1) ‘administrative department of real estate of the people’s government of a district or county’, or (2) ‘the sub district office’ of the region where the realty is in; or, (3) ‘the people’s government of a township at the place where the realty is located.’ According to the language of the Regulation, at least the guidance from one of these three entities is needed before a meeting called ‘owners congress’ can be assembled, which is the first step in creating the Owner’s Committee. However, what is missing here is that the law does not compel the owners in forming the Owners’ Committee, neither does it lessen the burdens or the complicated procedures of the owners’ in forming the Owners’ Committee.

If one takes a closer look, it is not difficult to see that forming an Owners’ Committee is a very time consuming and inefficient process. The governments’ involvements are not considered to be helpful to the property owners. Take, for example, the ‘Measures of Beijing Municipality for Realty Management,’ in order to form an Owners’ Congress, the owners first need to assemble owners of at least ‘50%
of the total area of buildings' and nominate a temporary representative who shall then ‘gather owners accounting for 5% or more of the total number of owners or owners of the exclusive units which account for 5% or more of the total area of buildings’ to submit an application to the aforementioned governmental entities (2) or (3) in order just to hold a ‘owners’ congress.’ This initial step towards the formation of the Owners’ Committee is by itself quite complicated.

In addition to this initial action by the owners, it will take the owners another sixty days before the governmental entities will facilitate the owners in forming an owners’ congress by firstly forming a preparatory group. Strangely, the regulation does not mention that the governmental entity can deny the application of forming the Owners’ Congress. Accordingly, if the owners are fully capable of forming an Owner’s Congress on their own, then there is no reason of having governmental involvement when the only option for the government is to approve but not reject the owners’ application. In addition, the Regulation also states that there is a possibility that one-third of the representatives attending the preparatory group are from the developers, who do not act in the best interest of the owners.

The entire process is complex and such complicity is the factor that subdues the owners’ incentives in forming the Owners’ Committee. Firstly, the government should not be involved in the process since the purpose of forming an Owners’ Committee is for the owners within a region to be self-autonomous, and therefore the Committee should not be subject to further administrative restraints. The governmental interference should be excluded, since the government is unlikely to represent the interests of housing owners. Secondly, the participation of the developers should be excluded at all stages of the formation of the Owner’s Committee. One of the major purposes of the Owners’ Committee is to defend the interests of the owners against the realty management firms, which are assigned by and often act in the interest of the developer. As a result of these analyses, it is the view of this Article that the government and realty service firms should be excluded from the establishment phase of the Owners’ Committee. In addition, since such a modification of the regulations does not need the initiation of legislation process, i.e., the active involvement of the National People’s Congress, such a process is technically feasible. Unfortunately, however, judicial review power is absent in the Chinese judicial system. If, in the future, such a power is acquired by

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68 Id. art. 14.
69 Id.
70 Id. art. 15.
71 Id. (“The number of owners’ representatives not from the construction entity in the preparatory group shall account for at least 2/3 of the number of members with voting rights of the preparatory group.”).
the judiciary in China, then there is a chance that the governmental involvement of self-autonomous organizations such as the Owners’ Committee can be declared unconstitutional. Currently, however, there is yet to be a provision that can tangibly support such a claim.

2. Owners’ Committees vs. Realty Management Firms

Upon the formation of the Owner’s Committee, another issue is how to maintain the independence of this organization so that it can act in the best interest of the owners. In order to achieve this goal, a mechanism needs to be established to prevent the Owners’ Committee from becoming the puppet of the realty management firms and instead to motivate the Committee to pursue the owners’ interests. Funding has always been a problem for the daily administration of the Owners’ Committee, and according to the public ownership nature of the Chinese culture and the advocating of labor models, a majority of owners may still uphold that people running the Owners’ Committee should not receive any payment. This belief also exists within the Owners’ Committee; some members feel that serving other owners should be a voluntary instead of a commercial act. However, under the trend towards a market economy, more and more people have begun to realize that it is difficult to keep even a non-profit organization running without compensating its members.

On the other hand, however, compensating the members of the Owner’s Committee on a routine basis may not provide enough incentives for the Owner’s Committee to fully realize its potential in exercising its power to pursue the interest of the owners. In addressing this issue, the concept of Valuation Adjustment Mechanism (VAM) needs to be introduced. There is little research being conducted on VAM in existing legal literature in English, however, this topic has been quite popular among Chinese scholars. Valuation Adjustment Mechanism is a bilateral agreement commonly adopted in the Private Equity (PE) investment in which the investors and the investee agree that, if the investee has not earned the agreed profit or accomplished certain conditions, then the investor has the right to readjust the value, or even sell their shares. On the other hand, should such conditions be met or if investee has achieved the agreed profits, then the investee shall have the right to obtain cash or shares as promised to be given by the investor. Namely, the VAM acts in the investor’s favor if

\[\text{Supra note 1, at 49.}\]

\[\text{It seems that the term “valuation adjustment mechanism” is a very unpopular term in the western academia, as a result, it is extremely difficult to find its definition. However, such a term is a popular research area in the Chinese context and legal practice. See Guo Leiming, Valuation Adjustment Mechanism (VAM) And its Impact On Enterprises Listing on ChiNex, V & T LAW FIRM, http://www.vtlaw.cn/content/2011/05-31/142537037.html (last visited in Mar. 5, 2016); See also, CHEN RUOYING (陈若英), Huoshui Qingqu: Falü Zhidu Yunxing de Xinxi Jizhi (活水清渠：法律制度运行的 信息机制) [INFORMATION MECHANISM OF CHINESE LEGAL SYSTEM] 20-21 (2014); OWEN NEE, SHAREHOLDER AGREEMENTS AND JOINT VENTURES IN CHINA § 9:17 (2009).}\]
investee does not perform well, and acts in investee’s favor when it does perform well. VAM enjoys wide popularity in PE activities in China.\textsuperscript{74} This is a type of arrangement is in the form of contractual provisions that diversifies risks yet guarantees the motivation of the target company being invested, and thus helps them to stay competitive. The purpose of this Article is not to discuss the VAM in the context of private equity, but to apply this mechanism to resolve the existing problems with regard to the triangular relationship between the owners, the Owners’ Committee, and the realty management companies. The VAM adopted in this context is not related to its original purpose, i.e., as an investment mechanism to guarantee a win-win outcome for both the investors and the investees. The VAM in the context of this Article refers to the adjustment of contractual language and the reconstruction of the motivations of the parties wishing to enter into the contract related to Owner’s Committee.

The VAM might shed light on the issue, because it is a tool designed in providing motivations to the targeted goals. Namely, the interests of the owners and the Owners’ Committee will be aligned once the VAM is adopted. For example, the owners can sign a VAM agreement with their Owners’ Committee, thereby agreeing that the members of the Owners’ Committee are entitled to the right of certain amount of payments from the owners if it performs the job well. On the other hand, if the Owners’ Committee fails to perform the agreed tasks such as in making the residential area a better place, then owners’ reserve the right to dismiss the Owners’ Committee and forming a new one. This might also be viewed as a process of privatization of the Owners’ Committee.

Furthermore, the inclusion of a VAM is a feasible measure since it does not violate any of the existing laws in that there is no laws or regulations which object to funding the administration of the Owners’ Committee by means of private funds of the owners. For example, according to the Regulation on Realty Management, the issue of how the Owners’ Committee should be funded is addressed by the local regulations. According to the ‘Regulation of the Shenzhen Special Economic Zone on Realty Management,’ the funding for the Owners’ Congress as well as the Owners’ Committee comes from the fees that are paid to the realty management companies by the owners on a percentage basis as prescribed by the municipal government.\textsuperscript{75}

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\textsuperscript{75} Shenzhen Jingji Tequ Wuye Guanli Tiaoli (深圳经济特区物业管理条例) [Regulations of the Shenzhen Special Economic Zone on Realty Management] (promulgated by the Standing Comm. of the Fourth Shenzhen Municipal People’s Cong., Sept. 25, 2007, effective Oct. 17, 2007) art. 22 (Chinalawinfo).
compensation for the members of the Owners’ Committee shall be decided by the Owners’ Congress. This means that there is legal ground with regard to where the fund for the operation of the Owners’ Committee should come from, and as long as the compensation for the owners is within the range of the percentage of the fees as stipulated by the government, then there shall be no legal obstacles. Different regions have different measures with regard to where the funds shall come from, most of them do not contradict with the implementation of a VAM agreement. For example, Hangzhou stipulates that the funding of the Owners’ Committee and the Owners’ Congress shall be paid by the owners, but it does not stipulate how such a rule can be implemented.\textsuperscript{76} In addition, Wuhan states the operation funds for the Owners’ Committee shall be left the rights to decide where the funds for the Owners’ Congress shall come from.\textsuperscript{77} As a result, from a policy perspective, implementing provisions sharing the rationale of that of the VAM do not run counter with the laws as well as regulations of certain regions in China.

3. The Factionalism of Owners’ Committees

As raised earlier in this Article, the problem of factionalism persists in self-autonomous organizations such as the Owners’ Committee, and factionalism per se has deeply compromised the potential of the Owners’ Committee in performing its duty as the guardian of the interests of the owners. Nevertheless, the object of study of this Article is China, and analyses of this topic should be examined under the Chinese context. Well before the commencement of the Culture Revolution in China, studies have demonstrated that Mao Zedong had the thought of ending factionalism, this was, in fact, one of the goals for the initiation of the Culture Revolution.\textsuperscript{78} Indeed, factionalism itself presents chaos and merely administers a game eventually without winners.\textsuperscript{79} In factionalism, ‘one faction may for the moment enjoy somewhat greater power than rival factions, but this power will not be so great that the victorious faction is capable of expunging its rival and assuring permanent dominance.’\textsuperscript{80} As a result, the first conclusion that can be drawn before commencing a discussion on how legal reconstruction can help to end or at least subdue factionalism is that factionalism is what that organizations seeks to avoid. In acknowledging this, another question that needs to be answered is:

\textsuperscript{76} Hangzhou Shi Wuye Guanli Tiaoli (杭州市物业管理条例) [Hangzhou Regulation on Realty Management] (promulgated by the Standing Comm. of Hangzhou People’s Cong., Nov. 22, 2013, effective May 1, 2014) (Chinalawinfo).

\textsuperscript{77} Wuhan Shi Wuye Guanli Tiaoli (武汉市物业管理条例) [Wuhan Regulation on Realty Management] (promulgated by the Standing Comm. of Wuhan People’s Cong., Jan. 1, 2010, effective Jan. 1, 2011) art. 41 (Chinalawinfo).

\textsuperscript{78} Andrew J. Nathan, \textit{A Factionalism Model for CCP Politics}, 53 \textit{CHINA Q.} 34, 54-55 (1973).

\textsuperscript{79} Id.

\textsuperscript{80} Id.
factionalism be ended by means of law, or does the absence of law have little consequence in ending factionalism?

In answering this question, a very good approach is to examine corporation laws and see if these laws shed any light. First of all, corporations and Owners’ Committee are both entities seeking to achieve an assigned purpose. Secondly, both corporations and Owners’ Committee are comprised of active members who are likely qualified for the function of the organization and are usually within the group as the result of a competitive process. These similarities provide bases in favor of applying effective legal measures adopted by corporation law to the Owners’ Committee. However, on the other hand, unlike unions, governments, or self-autonomous entities like the Owners’ Committee, corporations are not political structures since the operation of which are driven by profits and is supported by investment acquired not through public contributions such as taxes and fees paid by the owners. As a result, whether legal norms that provide viable legal solutions for the corporation laws will also work on political structures such as the Owners’ Committee remains unknown and is still subject to further research. However, one must realize that the Owner’s Committee cannot be incorporated because it will then become another realty management company.

4. Owners’ Committee vs. the Owners

The study of organizations dates back to Aristotle,81 who noted ‘[m]en journey together with a view to particular advantage, and by way of providing some particular thing needed for the purposes of life, and similarly the political association seems to have some together originally, and to continue in existence, for the sake of the general advantages it brings.’82 And as further research indicates, people form a group because they have a common interest;83 ‘there is no group without its interests’84 or ‘every group is an interest group.’85 Therefore, common interest is fundamental to organization formation. Without a common interest the organization cannot be formed, and as a result should a group that ought to perform the function of uniting the common interest fails to be established, then the problem most likely lies in the misalignment of the common interest among group members. One of the reasons for the formation of the Owners’ Committee is because the interests of the owners themselves are not aligned. For example, the owners who live in the center of the

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83 Olson, supra note 81.
residential area might not experience noise problems as severe as those owners who live in the more peripheral part of the residential area. As a result of which, different needs will form different impacts on how the Owners’ Committee will act, and the performance of the Owners’ Committee will doubtlessly create more benefit to certain group of the owners than others. Below, a few approaches to tackle with this problem are suggested.

Existing literatures on law and economics have studied how to optimize collective actions that can best serve the individuals interests. And the two examples adopted in the original analyses in the book ‘Game Theory and the Law’ can be applied to the discussion of the Owners’ Committee. In order for the Owners’ Committee to execute the decisions that serve the best interest of the owners, or at least a majority of them, attentions need to be drawn to ‘special difficulties that arise with collective action problems when there is private, nonverifiable information.’ First of all, consider the following hypothetical scenarios.

The first scenario involves an Owners’ Committee that is considering putting up a noise-shielding fence surrounding the residential areas. The Committee is concerned as to how the owners within the residential area respond to such a proposal and would like to learn the owners’ opinions before the commencement of the project and decided that they should ask the owners to vote. Assume further, that the cost of the entire project is $150, and there are 100 owners. The valuation by the owners are divided into three categories, those who value it at $2, $1, and $0. If all of the owners are willing to pay $2 for the project, then the entire sum collectable by the Owner’s Committee will be $200 which will exceed the cost of $150 and the project will commence. However, this is unlikely because those owners living within the center of the residential area desire the project less than those living in the peripheral part since noise do not affect them as much. As a result, the more likely outcome will be that the peripheral residents will value it at $2, the central residents at $0 and those in between value it at $1. Now the outcome might likely be less than $150 and the Committee will not raise enough funds to build this noise proof fence. Even if the calculated result is above $150, and eventually each resident is charged $1.5, the outcome is still not optimal since the residents at the central area will be dissatisfied. As a result, voting per se does not really provide enough information for the Committee ‘to make the efficient decision.’

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87 See generally id.
88 Id. at 202.
89 The scenario is an imitation of the examples in Baird et al., supra note 86, at 202.
90 Baird et al., supra note 86, at 202.
The second scenario involves a ballot where each owner is asked how much the project is worth to him/her and will pay the sum accordingly. For example, if the owner’s answer is $2, then he/she will be charged with $2. This mechanism is also problematic since the owners, knowing that they will charged $1.5 irrespective of their own perception of the value, is worse off reporting a value of $1 or $2 rather than a value of $0. 91

Both the voting and ballot mechanisms will not align the money contributed by the owners with their perceived value and thus these two scenarios are not optimal solutions for resolving decision-making problems of the Owners’ Committee. 92 In addition, these scenarios presented here suffered from the symptoms of the free-rider problem; in all the decisions made by the Owners’ Committee, there will be free-riders.

Now, let us simplify the model and imagine that there are only two owners within the residential area. 94 Owner A who lives in the center and Owner B who lives in the peripheral part of the residential area, C will be the Owner’s Committee. Now assume as the previous example that C wishes to construct a noise proof fence. While A is less affected by noise so the prospective satisfaction brought by the project is worth $25; on the other hand, B is more affected by the noise problem and thus the completion of the project will bring him/her $75 worth of satisfaction. For the simplification of discussion the cost of the project is set to $100. If C asks both A and B how much such the project is worth to them without disclosing the information of the true cost but this estimated worth will be their contribution, then both A and B, willing to settle the noise problem, are more likely to report their true value as they have in mind, which are $25 and $75, and the project will be initiated. On the other hand, if C asks both A and B how much the project is worth to them by disclosing the cost to be $100, then A will report a price less than $25, because he knows that B is more severely affected and thus willing to pay more. B on the other hand, would be less likely to pay $75 and would tend to pay less, as to avoid A free-riding on his payment. In this way the project will never start. As a result, from this model it can be seen that more transparency can sometimes render inefficiencies, and C in this case will fall into the dilemma of making an efficient decision that will allocate the cost in compliance with the value that truly worth to the owners.

The model described above involves only two owners, and the more owners are involved, the more complicated the situation gets. According to Olson, there is a negative relationship between the size

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91 Id. at 203.
92 Id.
93 Id.
94 The analyses in this paragraph are imitations of the analyses in BAIRD et al., supra note 86.
of the group and their incentives for pursuing collective action. So the problem of inefficiencies as well as unfairness persists when there is a large group of owners trying to exercise their own wills through the Owners’ Committee. The same rationale can also justify that owners living on lower floors shall pay less electricity bills since they do not use the elevators/lifts as much as those owners living on higher floors.

5. The Role of Deterrence

There is a key distinction of ‘intrinsic’ and ‘extrinsic’ vis-à-vis behavioral function of the law which divides human behavior into motivations driven by either intrinsic or extrinsic factors. The former are actions governed by morality while the latter are driven by external forces. Although deterrence might likely motivate one’s extrinsic motivations. In western literature, studies have demonstrated that deterrence alone cannot explain the level of compliance as seen in today’s society, which suggests there must be other factors that contribute to compliance. Such a statement can be evidenced by the severe penalty measures adopted in Ming dynasty against corrupted governmental officials. The cruel Ming penalties served their purpose in suppressing officials from corruption, but the outcome was still unsound and was not comparable with the severity and harshness of the punishment. Namely, deterrence alone, which is an extrinsic factor of motivation, is not the best measure in creating or preventing certain motivation. In addition, according to the study by Schwartz and Orleans, deterrence functions differently among different groups of people, and people with different religious beliefs. However, despite such a finding may have been the case in the U.S., it may not be an applicable theory in China. Nevertheless, such a finding offers implications with regard to the current problem

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95 OLSON, supra note 81.
97 Feldman, supra note 95.
98 See id. at 14 (suggesting the law’s function from a traditional perspective is deterrence).
100 Richard D. Schwartz & Sonya Orleans, On Legal Sanctions, 34 U. CHI. L. REV. 274, 299 (1967). ("The findings indicate that motivations of various kinds make a difference in taxpaying. They suggest that the two types of appeal affect normative orientation differently according to the status of those subjected to the appeals. Sanction threat increases normative orientation most markedly among the upper class, the better educated, and non-Catholics. Appeal to conscience change attitudes toward tax compliance most among the best and least well-educated, ...")
When constructing a mechanism that can help to establish an effective, functional Owners’ Committee, geographical and social income factors both need to be taken into consideration. According to Schwartz and Orleans, that ‘[s]anction threat increases normative orientation most markedly among the upper class, the better educated, and non-Catholics’\textsuperscript{101} while on the other hand ‘[a]ppeal to conscience change attitudes toward tax compliance most among the best and least well-educated, …’\textsuperscript{102} Law should be utilized to address the actions and motivations of as small a group as possible; the more individuals that are included in a group targeted by a set of laws, the less amount of total motivations will be created within the group, resulting in laws with ill-efficacy. The better approach might not be introducing a specific set of laws to govern the entire country, but introducing legal standards and reducing governmental involvement in the formation of Owners’ Committee and the dealing with any disputes among owners and the realty management companies. This is because in theory, laws capable of deterrence create diverse effects and they might fail to serve their designated functions. As a result, private measures such as contract may be adopted to resolve the problem.

The above discussion sheds light on the discussion of the topic of this Article that when regulating the relationship among the owners, Owners’ Committee and the realty management companies, creating deterrence is not the best option in the promotion of the self-governance of the owners through the functions of the Owners’ Committee.

IV. CONCLUSION

In order to achieve a welfare state, the U.S. has outsourced a partial of its functions to non-profit agencies to perform.\textsuperscript{103} And indeed, such a dependency of U.S. governmental reliance on non-profit agencies to conduct public welfare services has led to the people questioning what are the boundaries of the state\textsuperscript{104} that should delineate the public from the private. While the U.S. government is trying to lessen its government duties by entrusting these non-profit or even profit-seeking agencies, the Chinese government still clings to the idea of exercising control over organizations that are supposed to be self-autonomous. The continuing control by the government will only render the Owners’ Committee as a lifeless puppet that does not serve the interest of the owners. This Article discusses legal problems existing within the current framework of property owners’ self-

\textsuperscript{101} Id.
\textsuperscript{102} Id.
\textsuperscript{104} Id.
autonomous practices, and provided legal solutions which are partially economically analyzed.

This Article concludes, in part that the key of motivating the owners in forming the Owners’ Committee lies in the simplification of the current regulations. The first step is to minimize the restrictions on the number of Owners’ Committees that can be established within a certain residential area. These measures are feasible under the current rule of law environment in China since these regulations will not require the initiation of legislative process of the National Peoples’ Congress. This Article also applies the rationales of the VAM to incentivize the Owners’ Committee in safeguarding the interest of the owners, which is theoretically sound since by utilizing the rationales of the VAM, the interest of the owners and the Owners’ Committee could be aligned. This paper also concludes that voting is not the optimal means of achieving majority interest of the owners which suggests that more than one Owners’ Committee that is financially independent should be established for different regions within a residential area to prevent free-riding issues. In addition, this Article concludes that factionalism is a problem impeding the efficiency of the operation of the Owners’ Committee and such a problem cannot be resolved by applying the measures of corporation laws.