



# Apartment ownership around the world: Focusing on credible outcomes rather than ideal systems

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## ABSTRACT

No matter where in the world they live, if a person lives in a city it is increasingly likely that, if they can buy a property, it will be an apartment. Yet the documents a Sydney buyer's lawyer will review will be different to those in New York or Helsinki because there are many different systems of multi-owned property ownership around the world. These differ because of underlying differences in property law, but also because different jurisdictions have dealt with the dual challenges of horizontal subdivision and cooperative management in very different ways.

While creating typologies for these different systems is helpful to understand the varied forms they can take, typologies are challenged by the fact each system differs in practice. In this paper, we draw on Ho's (2014) 'credibility thesis' to explain why it is so difficult to classify multi-owned property systems across jurisdictions. We demonstrate that similar legal systems of multi-owned property can result in different outcomes for owners in practice, just as different legal systems can result in similar outcomes. This is because the relationship between legal systems of ownership and the experiences of owners is mediated by local social, cultural, economic and political contexts.

## 1. Introduction

Apartment living is often put forward as a solution to the housing pressures of rapid urbanisation, with many apartments individually-owned rather than rented from the government or building landlord. Across the world, there are many differences in the legislative systems for apartment ownership and other multi-owned property types, yet there is strong evidence of ongoing policy transfer between jurisdictions; condominium, strata and cooperative systems across the globe frequently 'borrow' from each other (e.g. van der Merwe, 1999; Mehana, 2015).

However, it is a challenge to take lessons from the experiences of other jurisdictions. The task is complicated not only by the differences between legal structures and formal systems of owner rights and responsibilities, but also by different social, cultural and historical contexts that shape norms and expectations associated with property ownership. This latter set of differences are particularly important, as they influence how formal rights and responsibilities are negotiated in practice.

This paper seeks to explain this with reference to Ho's credibility

thesis, namely that "what determines institutions' performance is not their form in terms of formality, privatization, or security, but their spatially and temporally defined function" (2014:13–14). We describe how social expectations around property ownership persist in spite of changing legal structures, as well as the ways legal structures are adapted and amended to better respond to social expectations. Understood in this way, the institution of apartment ownership (and other multi-owned property ownership) is given credibility not only through formal laws, regulations and policies, but through the ways in which they are negotiated, enacted, and ultimately amended to accommodate local expectations.

Examining the institution of multi-owned property ownership from the perspective of how it is experienced, this paper demonstrates both how similar legal systems of ownership can result in different outcomes and how different legal systems of ownership can result in similar outcomes in practice. The paper thus provides evidence to support the first prediction of the credibility thesis outlined in the introduction of this special issue - that different institutional forms perform identically, inasmuch as identical forms perform differently. These findings draw upon primary legislative and policy documentation, secondary and

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academic literature, and interviews with 129 lawyers, property managers, government agency staff and other experts in various aspects of apartment living or ownership. Interviews covered 12 jurisdictions (either nations or provinces/states) across the British Isles, North America, Australia, Asia and Africa. The analysis shows that, while legal systems of multi-owned property ownership can influence the experiences of apartment owners and residents, they do so only through the mediating force of social context, including financial markets, development practices, wider legal structures, planning policies and social and cultural norms.

This has important ramifications for policy transfer and legislative reform in terms of the acceptance and perceived performance of multi-owned properties in different contexts. It also has ramifications for broader urbanisation processes, as it offers a microcosm of the dynamic tensions between individual and collective needs that arise more broadly in the modern city, as people negotiate their desires, rights and responsibilities in neighbour relationships, civic interests and society.

The paper begins with a review of the literature on legal frameworks for apartment ownership and policy transfer, before considering the utility of the credibility thesis for exploring apartment ownership systems. This is followed by an overview of the methods used in our research and what our research findings tell us about apartment ownership in practice. The paper concludes with a discussion of the utility of the credibility thesis in understanding the different forms of multi-owned property ownership in place around the world, and a call for further research to understand the broader social, political and economic consequences of policy mobilities in systems of multi-owned property ownership. The paper will focus on systems of apartment ownership in particular.

## 2. Literature review

This section introduces academic scholarship on: legal frameworks for apartment ownership; policy transfer in relation to apartment ownership; and the utility of the credibility thesis for understanding apartment ownership systems.

### 2.1. Legal frameworks of apartment ownership

A small number of researchers have attempted the daunting task of conducting comparative studies of systems of apartment ownership (e.g. van der Merwe, 1994; Paulsson, 2007; Lujanen, 2010). van der Merwe (1994: s 49) notes that, from a legal perspective, apartment ownership systems differ among jurisdictions in how they address the challenges of both horizontal subdivision (law of property) and collective management of the building (law of association). Further, he explains that being a “statutory creation with its own peculiar characteristics, it inevitably conflicts with traditional dogmas and principles relating to the law of property and the law of associations” (1994: s 49).

First, regarding the challenge of horizontal subdivision, van der Merwe notes that “the various condominium systems of the world are usually divided into either unitary or dualistic systems” (1994: s 50). In unitary systems, an apartment owner is a co-owner in undivided shares of the land and all parts of the building, and has rights to the exclusive use of an individual apartment within the building as a result of their co-owner status. Common examples include New York cooperatives and Swedish bostadsrätt. In dualistic systems, an apartment owner also owns a co-ownership share in the land and common parts of the building, but the right of ownership for their own apartment. Common examples include US condominiums and Australian strata title. Fig. 1 provides a pictorial representation of these two ideal systems of multi-owned property ownership.

While these ideal systems of ownership offer a useful construct, their specific application reveals significant variation within each ideal type. For example, in the case of apartment ownership systems, van der Merwe (1994: s51) notes that there are important differences between

dualistic systems on whether individual or collective property ownership is given priority. He notes that in some jurisdictions joint ownership of common property and individual ownership of the unit are considered equivalent (e.g. Portugal and Turkey), while in others individual ownership of the unit is considered primary (e.g. France, Belgium, Italy and Spain).

van der Merwe (1994) also notes that the prioritisation of individual owners or the collective of owners can change over time in any one jurisdiction. For example, US cooperatives when first introduced tended to prioritise collective rights, but over time have moved to focus more on individual rights. Inversely, Hong Kong’s apartment ownership began by prioritising individual rights, but has moved to emphasise the need for effective collective responsibility.

Second, the way in which collective management of a building is legally managed also varies between jurisdictions, whether through cooperative, company or corporation. When the abovementioned system of apartment ownership in Hong Kong was introduced, for example, it required no formal body for co-management, such as an owners’ corporation or body corporate. Even today, while the development of an owners’ corporation is actively encouraged (Hong Kong Government, 2015), it is still not required.

Finnish housing companies are another example. Lujanen (2010) argues that having the collective ownership structured as a limited-liability company is a notable distinction from other ‘cooperative’ structures. This system, he argues, offers greater financial security by requiring that shareholders pay levies until they have found a replacement. He goes further to argue that the Finnish system is most “‘natural’ and easily understood” (Lujanen, 2010: 193), due to its foundation in company law. It may be, however, that the system is most “‘natural’ and easily understood” in the specific Finnish context, being highly credible in the jurisdiction in which it has endogenously evolved.

A third example is the English and Welsh solution of leasehold ownership, which has a very long history and a complex building management arrangement that reflects this. Legally, leasehold addresses horizontal subdivision through long-term leases (usually 99 years or longer) rather than title. In such an arrangement, the apartment ‘owner’ (leaseholder) leases their unit from a landowner (freeholder). Yet in practice leasehold has come to be treated as equivalent to ownership, and the system has been gradually adapted so it more closely resembles other forms of English property ownership. This has included legislation to allow the formation of Leaseholder Resident Management Companies (similar to owners corporations) that can manage the building, land and common assets (Commonhold and Leasehold Reform Act, 2002), and legislation that gives leaseholders the right to claim ownership over the land on which their leasehold sits (UK Government, 1994).

### 2.2. Policy transfer and practices of apartment ownership

The different approaches in law have a common objective of reconciling the tensions between individual and collective ownership of the building – both in terms of demarcations of ownership and the structure of the collective managing entity. Legislative reforms in the area have increased exponentially over the last century, often drawing on institutions of apartment ownership in other jurisdictions.

Our analysis in this paper primarily concerns the ‘hard’ transfer of legislative framework and policy, and deliberate transfer led by government actors to address an emerging issue (urbanisation). We stress ‘primarily’ because it is important not to exclude other aspects of policy transfer. For example, legislative transfer is often accompanied by the ‘soft’ transfer of ideological or conceptual framing (Stone, 2004). Similarly, while the focus is on deliberate state-led transfer, other actors influence the desire to adopt a particular set of legislative approaches – making the transfer potentially more coercive (Dolowitz & Marsh, 1996). Also, the acceptance of a policy framework will be dictated by

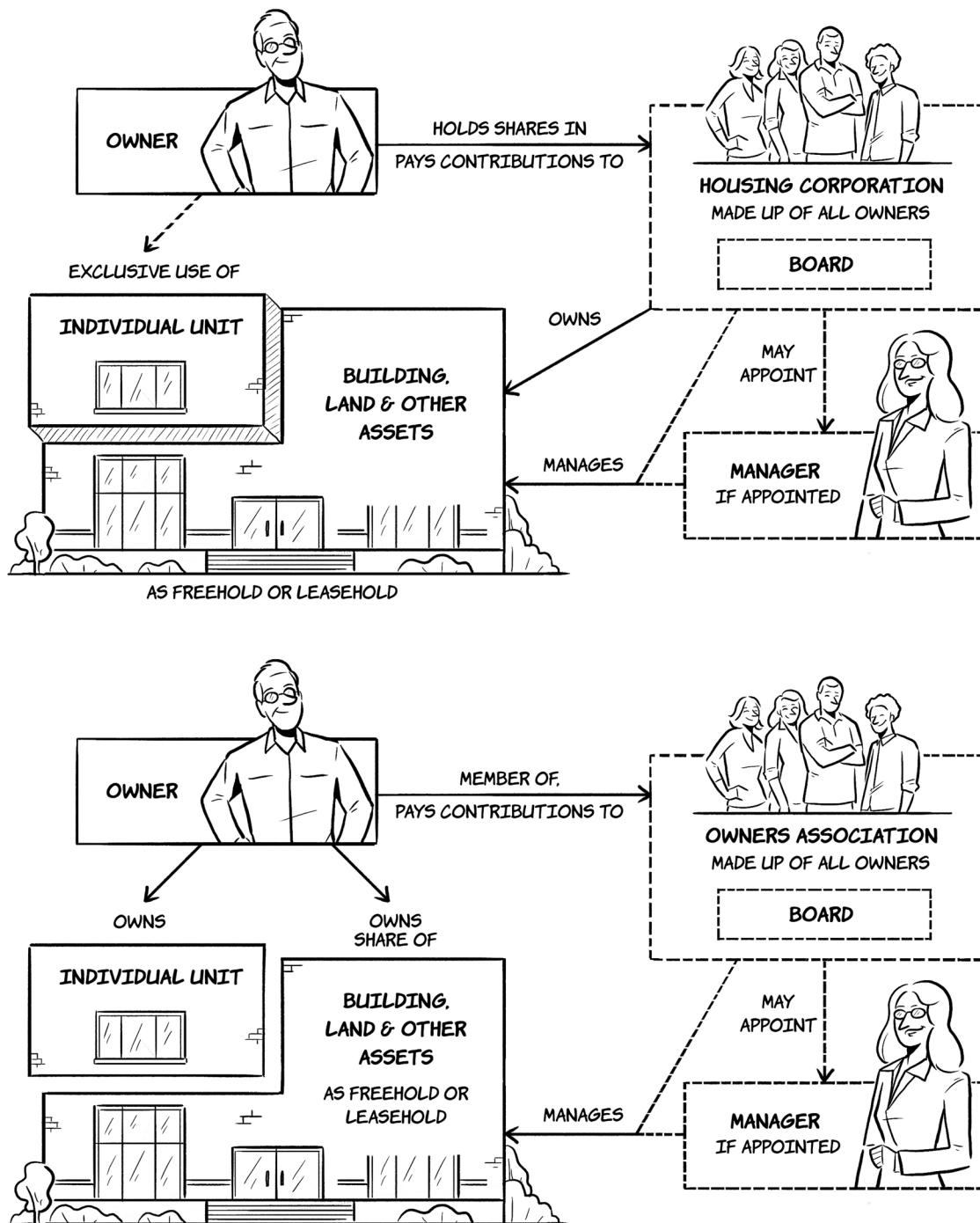


Fig. 1. Ideal unitary (top) and dualistic (bottom) apartment ownership systems. Images by: Dawid Szymczyk, dawidszymczyk.com.

other influences and actors engaging with it.

Latin American countries introduced *condominio* and *propiedad horizontal* systems based upon systems in place in Europe from the 1920s (van der Merwe, 2015), while Florida's condominium system was originally based upon that of Puerto Rico (Lasner, 2012: 178). The NSW (Australia) strata title system was influenced by what was happening in the US at the time and in turn was influential in the development of the apartment ownership systems of South Africa, British Columbia, New Zealand, Indonesia, Malaysia and Brunei (Easthope & Randolph, 2009:244).

Such policy transfer continues, and dualistic systems appear to be gaining preference. The UN has issued guidelines for constructing

legislation in post-Soviet states, positioning condominiums as the preferred form of apartment ownership (Economic Commission for Europe, 2002). Similarly, the USA's Uniform Law Commission (Uniform Law Commissioners, 1980) identified condominiums as the preferred approach, despite a long history of cooperatives in some US housing markets. New dualistic apartment ownership systems have recently been introduced around the world, such as English commonhold (2002) and Swedish Ägarlägenheter (2009), although neither have been particularly successful to date (UK Law Commission, 2018; Fastighets Tidning, 2013).

Despite policy transfer being conceived as a phenomenon to critically analyse (Dolowitz & Marsh, 1996), it has often been cast in more

normative terms: a thread of analysis that Benson and Jordan (2011) identify as “actively promoting policy transfer as a means to guide and even stimulate policy innovation”. However, many have noted that transferring policy from one jurisdiction to another is complicated. Dolowitz and Marsh (2000):19 identify one cause of the failure of policy transfer as “different values lead[ing] to different, contradictory aims” within the policy community. Yet the values or expectations of other actors engaged with the institutions of apartment ownership can also be expected to have an impact. Despite this, there is not yet any systematic approach to understanding what those impacts might be, other than a sense that local context is important. This gap in understanding policy transfer has been criticised both within political science (de Jong, 2009) and beyond (McCann & Ward, 2012; Peck, 2011).

For apartment ownership in particular, there appears to be tacit acknowledgement that successful systems might not look the same in different places, and a sense that satisfying local actors’ expectations is more important than taking a particular legislative form. Already mentioned is van de Merwe’s identified variety within unitary and dualistic systems of apartment ownership across Europe. Paulsson (2007) and Lujanen (2010) also note that the type of ownership does not necessarily correlate with user experience, suggesting that function in practice is more important than form in policy.

### 2.3. Apartment ownership and the credibility thesis

Ho’s ‘credibility thesis’ (2014; 2016) sheds further light on the role of local context in shaping the acceptance of a system of apartment ownership by local actors. The credibility thesis offers fruitful insights to the persistence and acceptance of particular institutions, which we apply here to apartment ownership and the limitations of policy transfer.

First, the credibility thesis posits that an institution’s performance is not determined by its formality, but its function in a given context (Ho, 2014). Ho discusses this in relation to property ownership in China, noting that if they were to focus purely on the form of property ownership, few people would be willing to invest in property (Ho, 2017). Despite this, urban real estate has driven China’s economic growth for decades. Imposed rationality of formal property rights did not necessarily align with established ‘land-lease’ practices on the ground in China, with the latter holding more credibility despite being informal. One example with immediate parallels is the credibility of the seemingly perverse institution of leasehold in England, vis-à-vis the recently introduced and, from a legislative policy perspective, more coherent commonhold. More broadly, we argue that the dualistic and unitary distinction, as a manifestation of policy form, matters less than how a given system functions in practice.

Second, the credibility thesis posits that institutions are best understood as complex, dynamic and endogenously constructed. That is, the institutions of apartment ownership are more than particular – deliberately designed – government policies; rather, they are the aggregate construction of all actors engaged in the policy space. As such, it is necessary to understand the expectations of those actors, rather than the institution itself, to identify if it is credible. As Ho (2016: 1126) states, institutions are not a ‘black box’, but instead can be understood in regards to “what they do in a given context”. In this analysis, we examine how in particular the institution of apartment ownership takes on different forms, in practice and in legislative form, to ensure it is credible in a given context to apartment owners, lenders, managers, lawyers, building specialists, and others.

Third, a corollary of this focus on the actors is a more fulsome acknowledgement that credibility does not imply consensus. Credible institutions will be “essentially conflict-ridden” (Ho, 2016: 1127). That is, the actors’ motivations for interacting with the institution are diverse and always changing, so there is no sense that equilibrium is reached and an institution will reach some final form. Blandy, Dixon, and Dupuis (2006) articulate an example of this constant disequilibrium in

apartment ownership, describing ‘critical legal events’ when developers and managing agents shift the balance of rights in their favour. These events impact the experience of owners, risking the credibility of the institution overall. Blandy et al. (2006: 2366) also highlight how these dynamic tensions play out in the “gaps and confusions in the legal framework”.

Fourth, acknowledging the ever-changing context within which an institution sits means that the institution’s function will also be ever-changing if it is to “persist” (Ho, 2016: 1126). In light of this, credible institutions are typified by incremental endogenous development, wherein acceptance among actors is contingent on a perception that the institution is embedded and durable. In the following section, we demonstrate how, notwithstanding a degree of more abrupt legislative reform that incorporates policy transfer, credible institutions of apartment ownership have adapted to the expectations of local actors.

Finally, the credibility thesis aligns with the growing literature on ‘policy mobilities’ (e.g. McCann, 2011), which challenges the ways global, neoliberal hegemonies colonise places around the globe. This is relevant for understanding the ways that legislative reforms to enable urban consolidation are being driven by mobile global capital, and imposed on local actors. This raises other questions about the expectation that social and cultural norms will fall in line with these economic hegemonies, and accept particular forms of apartment ownership that align to their logics.

### 3. Research methods

To reach an understanding of the relationship between legal systems of apartment ownership and the practices of apartment ownership on the ground, this paper draws upon three main sources of information.

First, a review of academic and professional literature on forms of apartment ownership around the world. The purpose of this analysis was to identify whether forms of apartment ownership differ in a formal way in terms of legal status and rights and responsibilities of owners; and how forms of apartment ownership have been informed by the transfer of existing formal systems of other jurisdictions. Second is primary documentation regarding the legal systems analysed including legislation and policy documents. This enabled a stronger triangulation between the secondary data sources and the primary data generated through the interviews. Third is a series of interviews with 129 people across the British Isles, North America, Asia and Africa about their apartment ownership systems and how they impact on the lives of apartment owners and residents. The fieldwork covered twelve jurisdictions (nations, provinces or states, depending on the level of government dictating the legal ownership system), and stakeholders with in-depth knowledge of their own apartment ownership systems (see Table 1). Interviews took between 30 min and 3 h each. They were recorded and then coded within broad over-arching themes: development, handover, early years (0–9), later years (10+) and redevelopment/demolition. This coding allowed us to consider the main stages in the lifecycle of a multi-owned property (see Easthope et al., 2014) and the important points throughout this lifecycle when these apartment ownership systems influence the lives of apartment owners and residents. With consideration to the length of this paper, we chose to focus on the early years and later years of a redevelopment, and to put aside questions relating to development, handover and redevelopment. The questions that we identified as of importance to apartment owners and residents in these stages were:

- 1 Can I get a loan to purchase a property, and under what conditions?
- 2 Can I do what I want in my unit?
- 3 Can I rent or sell my unit to whomever I want?
- 4 Who is responsible for maintaining the property?

Earlier drafts of this paper considered all four questions, however, again for the sake of brevity, we have not spoken about maintenance



**Table 1**  
Interviews.

Profession	Locations <sup>a</sup>	Number of interviewees
Lawyer	British Columbia, Florida, Massachusetts, New York State, Ontario, Quebec, South Africa	27
Property manager	British Columbia, Florida, Hong Kong, Massachusetts, New York State, Ontario, Quebec, Scotland, Singapore, South Africa,	26
Government	England, Massachusetts, New York State, Ontario, Singapore, South Africa	24
Academic	Hong Kong, Massachusetts, New York State, Quebec, Scotland, Singapore, South Africa, Ontario, British Columbia	24
Owner	British Columbia, Massachusetts, New York State, Ontario, Quebec, Republic of Ireland	11
Mediator	Massachusetts, Ontario	4
Not for profit	England, New York State	3
Realtor	British Columbia, Massachusetts, Ontario	3
Developer	New York State, South Africa	2
Engineer	New York State, Singapore	2
Architect	Ontario	1
Journalist	New York State	1
Mortgage lender	England	1
TOTAL		129

<sup>a</sup> Refers to the administrative region responsible for multi-owned property legislation. In some countries this is national, while in others it is state-based.

here, focusing instead on the first three questions. In addition to the desk-based research and primary fieldwork in these jurisdictions, the analysis draws on previous primary research in New South Wales Australia by the first author (Easthope & Randolph, 2018; Easthope & Randolph, 2016; Easthope, 2015; Easthope, Randolph, & Judd, 2012).

In preparing this paper, we sought to explore the first of the predictions of the credibility thesis: that different institutional forms perform identically, inasmuch as identical forms perform differently. We expected that this would be the case in relation to systems of multi-owned property, because our research so far suggested that it is not the legislative form of apartment ownership *per se* that determines outcomes in practice, but rather how those forms of property ownership are understood, negotiated and adapted in different contexts. This paper provides support for the first part of this argument – by demonstrating that divergent forms of multi-owned property perform in a similar manner, just as similar forms operate differently. The second part of the argument, that the reason for this is because of the way that these forms of ownership are understood, remains a hypothesis at this stage, because it is impossible in the space of a single paper to provide a detailed analysis of the practices, social conventions and market dynamics of the twelve jurisdictions investigated for this study that may have influenced these outcomes. In the scope versus depth analytical dilemma discussed in the introduction of this special issue, we have in this paper opted for scope, but call for further research and analysis to further explore in depth the implications of our findings.

In selecting examples to include in the subsequent sections of this paper, we systematically reviewed all of the quotations coded under each relevant coding heading in relation to the three main questions that were the subject of our analysis, as outlined in Table 2. We then considered the content of the comments in relation to the type of ownership system that was under discussion and selected quotations

that demonstrate the potential for similar ownership systems to result in different outcomes and vice versa. The paper is not intended as a cross-jurisdictional comparative paper, but rather seeks to test the potential utility of the credibility thesis to this area of inquiry.

#### 4. Apartment ownership in practice

In this section, we explore the operation of apartment ownership and other forms of multi-owned property in practice. We demonstrate how the outcomes for the actors engaged in the institution of apartment ownership can be similar in different legal systems and different in similar legal systems. The section is organised around three questions that impact what it means to own an apartment:

- Can I get a loan to purchase a property, and under what conditions?
- Can I do what I want in my unit?
- Can I rent or sell my unit to whomever I want?

These three facets of apartment ownership were identified as important for three reasons. First, they represent the aspects of home-ownership (generally, not just in multi-owned properties) that closely align with both the personal agency aspects of home – such as control over costs, freedom in self-expression and ontological security – as well as the legal/institutional aspects of property ownership. Second, they present barriers to effective take-up of higher density urban forms in some instances, and so have been the subject of explorations of policy transfer, with actors asking ‘how have other jurisdictions overcome these barriers?’. Third, central to the thesis of this special edition, these facets seemed to belie any consistent connection between legislative formalness and accepted practices.

The implication is that it is not the legislative form of apartment

**Table 2**  
Source of information informing findings sections.

Question	Source of information		
	Academic & professional literature	Primary documentation	Interviews
Can I get a loan to purchase a property, and under what conditions?	✓	✓	✓ Handover, including sub-code ‘knowledge of purchasers’
Can I do what I want in my unit?	✓	✓	✓ Early years, including sub-code ‘knowledge of renters, owners and the board’ Later years, including sub-codes ‘disputes and mediation’, ‘enforcing rules’, ‘managing different resident profiles’
Can I rent or sell my unit to whomever I want?	✓	✓	✓ Later years, including sub-code ‘limits on renters’, ‘screening new purchasers’

ownership that determines outcomes in practice, but rather how those forms of property ownership are understood, negotiated and adapted in different contexts.

#### 4.1. Can I get a loan to purchase a property, and under what conditions?

Financing purchases is an important aspect of apartment ownership; with a desire for access to mortgage products by apartment developers leading much reform in the legislative space in the middle of the 20th Century. For example, Australia's first strata title system was introduced in 1961 in New South Wales (NSW) primarily as a means to facilitate mortgage lending on individual apartments and hence to increase the potential market for apartment property (Randolph & Easthope, 2014). Prior to strata title, existing apartment buildings were owned either entirely by single landlords or under company title, a form of unitary ownership. Banks were wary of lending on company title shares, because of the risk of the property being repossessed and other shareholders not agreeing to a sale (Easthope et al., 2014).

Meanwhile in the US the introduction of the condominium was driven by the desire to offer a form of ownership 'equivalent' to that of a detached house and so enable mortgage lending under the same conditions (Lasner, 2012). This was largely achieved in 1961 with the passing of an amendment to the National Housing Act that allowed the Federal Housing Administration to issue mortgages on condominiums (van der Merwe, 2015). However, at the same time in New York, apartments in (unitary) cooperative buildings were already receiving mortgages without much difficulty. And many banks remain comfortable approving mortgages on cooperatives within New York (Haggerty, 2011), although there are some restrictions placed on mortgages in small cooperative buildings due to the increased risks for reselling in the case of default (Vereckey 2012).

In this example, a jurisdiction with established, credible unitary systems had few barriers to mortgage lending. This is in contrast to jurisdictions where apartment ownership systems were not as strongly established, and so credibility relied on establishing similarities with broader, accepted institutions of property ownership underpinned by a land title.

Meanwhile, in England and Wales, purchasers of leasehold property can find their costs of borrowing higher than those buying freehold properties in certain situations, such as when their lease is less than 70 years (HomeOwners Alliance, 2019). However, it is too early to tell whether mortgage providers will offer discounted mortgage interest rates or lower loan to value ratios to purchasers of commonhold properties (the dualistic apartment ownership system introduced in 2002) on freehold land. Currently, most mortgage lenders in England and Wales do not even offer mortgages for commonhold properties (Barker, 2018).

One can also get an individual mortgage to buy an apartment in Hong Kong, even though apartment ownership in Hong Kong is technically tenancy-in-common rather than exclusive possession of a property. Legal academic Adjunct Professor Malcolm Merry explained:

... it's a leasehold tenancy in common ... everyone owns everybody else's flat to some extent, legally ... what is granted is merely exclusive use, and in legal terms, a license to occupy. If it had been a tenancy of the actual flat, then that would be exclusive possession, but it's not a tenancy. That's technical legal stuff ... In practice, it doesn't make any difference. (Academic, Singapore, Adjunct Professor Malcom Merry, 06.2016, Ref 108)

The implication of the above examples is that context, how familiar people are with a particular institution, and how they understand and interpret the institution more broadly, is what has made a difference in terms of the practices of the mortgage providers, rather than the particular legal systems.

Conversely, there are examples of different results being achieved in similar legal systems. For example, United States mortgages can include

conditions about the proportion of apartments in a condominium that can be rented out (Freddie Mac, 2018).

In the US, we have a secondary mortgage market, so Fannie May and Freddie Mac, for condominiums, the threshold is that you have to have fewer than twenty per cent of the units renter-occupied. If it's more than that, the secondary mortgage market won't buy the mortgages ... So what generally happens is that people have to put down a much larger down-payment and find a lender that wants to hold that loan in their own portfolio. (Government Employee, Massachusetts, 02.2016, Ref 8)

However, under comparable dualistic systems in Australia, the proportion of renters in a building is not taken into consideration in assessing mortgages. This divergence in practice can also be explained through local context, and the changing motivations of local actors. The sub-prime mortgage crisis and subsequent crash in the housing market made lenders in the United States very wary of the risk profiles associated with their loans, especially as investor owners were susceptible to taking on excessive risk. Meanwhile the Australian housing system weathered the global financial crisis relatively well (Murphy, 2011), and while lending practices have been tightened, this increased scrutiny has not extended to the proportion of rented properties.

Despite policies in these different jurisdictions being developed through the transfer of policy from other jurisdictions, these experiences support the thesis that for an institution like apartment ownership to be accepted by actors it has to develop endogenously. Further, when endogenously developed systems had developed a degree of credibility, the form of that institution was not a barrier to its effective acceptance among stakeholders, as is the case in leasehold in England and New York cooperatives.

#### 4.2. Can I do what I want in my property?

Another common tension in apartment ownership is the potential for individual owners to be constrained in how they use their home. In her book on strata title property rights in Australia, Sherry (2017) notes that owners corporations' ability to make by-laws (rules) governing the behaviour of residents within their individual units is novel in liberal democracies, where the power to regulate land is usually a public function. She argues that the ability of owners corporations to make such by-laws "violates the principle of negative liberty and the sanctity of the home by allowing the regulation of behaviour inside people's homes which does not affect others at all, or does not affect them in any meaningful way" (2017:179). Common examples internationally are smoking and keeping of pets:

People are fighting tooth and nail over lifestyle issues, like smoking ... there's been a lot of court cases recently on smoking and it's the real push and pull on the extent to which you can declare a building completely non-smoking ... because there have been cases where smoking addicts have gone to the human right tribunal and said their addiction to nicotine is a disability and have tried to get orders from them. (Staff lawyer at British Columbia Law Institute, British Columbia, Kevin Zakreski, 02.2016, Ref. 75)

Sherry uses by-laws that ban the keeping of pets as an example, where the keeping of a pet within a unit does not affect others so long as that pet does not disturb neighbours. She argues that by-laws banning pets in Australian jurisdictions have been allowed to persist because of "a repeated default to contractual norms" in Australian case law on by-laws (2017:169) despite the fact that "by-laws are not contracts. They bind people who have not agreed to them, including minority owners" (2017:165). Sherry argues that the extensive litigation regarding pets laws in the states of NSW and Queensland (which allow pet bans) demonstrate that "owners will rail against prohibitions that they consider unjustifiable" (2017:182). Indeed, change is already evident in NSW, where new model by-laws were introduced in the latest round of

legislative amendments providing more opportunities for pet ownership within Australian strata schemes (*Strata Schemes Management Regulation 2016* (NSW) schedule 3 section 5).

Yet by-laws that encroach upon an individual's use of their own unit are not a universal feature of condominium systems. In Quebec, for example, it is not possible to ban pets in condominiums, unless they have been banned in the development since it was first developed (i.e. in the original declaration of co-ownership), or unless individual animals can be shown to be a nuisance (Fiset, 2010). Meanwhile, in South Africa, each request to keep a pet must be individually considered and blanket bans against pets are not allowed (as a result of court ruling *Body Corporate of The Laguna Ridge Scheme No 152/1987 v Dorse 1999 (2) SA 512 (D)*). We are not able to determine why these differences in rule making powers exist. They may result from different legal approaches to by-laws (whether or not they are considered as contracts), or different social expectations regarding one's ability to curtail the actions of one's neighbours. However, what the Australian case of by-laws banning pets demonstrates is that when by-laws are enacted that many people object to, resistance by residents can result in legislative change. In the language of the credibility thesis, the function of the institution of apartment ownership must change over time in order for it to remain credible.

Making alterations to one's unit, such as renovating the kitchen or removing or adding interior walls are also more or less difficult in different jurisdictions and in different housing sub-markets within jurisdictions. In Hong Kong for example:

[Subdivision] is common in the old districts ... in Sham Shui Po ... there was a survey estimating the number of buildings over 30 years old in that district – about half of these old buildings have subdivided units ... In Hong Kong ... if you want to do some conversion or some kind of alteration works to a flat, you may need to inform the management company in some cases, but in old buildings the management companies don't care about that. (Academic, Singapore, Associate Professor (Dr.) Simon Yung Yau, 06.2016, Ref. 110).

In comparison, in New South Wales, all owners need to get permission from the owners corporation to reconfigure walls (*Strata Schemes Management Act (NSW) 2015*, section 110) and in South Africa (while rules vary between buildings) body corporate permission will usually be needed (Jacobs, 2017). This is despite the fact that in law owners in Hong Kong are tenants in common, while strata title owners in New South Wales and sectional title owners in South Africa own the internal areas of their apartments in their own right. Again, we see that the legal form does not necessarily dictate its function in practice.

#### 4.3. Can I rent or sell my unit to whomever I want?

In New York, irrespective of whether you own a unit in a condominium or in a cooperative, other owners in your block can have a say in the sale of your unit. Owners in condominiums in New York have the first right of refusal on sales:

[Condominiums] have the right of first refusal if we don't want to sell to someone. But unless there's a reason, and usually it's a financial reason, that's all we can do. We can either buy the unit, or we approve. (Property Owner, New York, 02.2016, Ref. 47)

Similarly, in cooperatives, the board has a say in who the property is sold to, and can block sales to people they do not feel would fit, subject to adherence to discrimination laws (Stellin, 2012). While the power of other owners in the cooperative is greater than that in the condominium, in both cases, joint owners of the property do have a say in who purchases into the building.

This is not the case in NSW Australia where owners are not permitted to interfere in any way with the sale, transfer or lease of another owner's property (*Strata Schemes Management Act 2015* (NSW) section

139, schedule 2). In Singapore, which drew upon the NSW legislation in developing its own legislation, the same provision applies (*Building Maintenance and Strata Management Act 2004*, schedule 32, section 9). However, in Canada's British Columbia, a jurisdiction that also based its strata title laws on the NSW legislation, it is possible to ban or limit rentals in a strata title development. However, there are signs this is changing, responding to a changing social and economic context, especially in the capital city of Vancouver where soaring house prices and rents have meant increased pressure on the private rental market. A British Columbian lawyer explained:

Eight to ten years ago the provincial government amended the legislation to say that where a developer files a rental disclosure statement ... that reserved the right for the developer to rent any of the strata lots before they sold them ... the first purchaser from the developer will be able to rent until the rental disclosure statement expires. Many of those rental disclosure statements ... were indefinite. So that meant that the first purchaser was always entitled to rent ... but only the first purchaser ... Then about eight years ago or so, the government amended the legislation again to say, where the developer files a rental disclosure statement, it is valid for all owners, first purchasers and subsequent purchasers, until the rental disclosure statement expires ... the motivation at the time, I understand, was pressure by the City of Vancouver on the provincial government to increase the rental stock. (Lawyer specialising in condominium law, British Columbia, 02.2016, Ref. 71)

This example reflects the competing tensions between the collective interests of all owners and the individual interests of each owner. The reality is that how these tensions are resolved will vary across space and time. For apartment ownership to remain credible to the actors involved, there is a demonstrated need for the practices to adapt to reflect changing expectations. Importantly, there is little sense that a particular legislative framework is 'more successful' at building credibility: for example, that allowing the collective of owners to dictate sales will universally increase acceptance of apartment ownership, or the opposite.

#### 5. Implications for legislative reform: concluding remarks

[Easthope]: Do you think that the civil code approach has benefits over the common law approach used in other provinces in Canada when it comes to condos?

Whatever law you have it works the same. It's not really better or worse. (Lawyer and mediator, Quebec, 03.2016, Ref 30.)

The interview quote above underscores the credibility thesis, which highlights that "what determines institutions' performance is not their form in terms of formality... but their spatially and temporally defined function" (Ho, 2014: 13–14). The analysis above demonstrates that, when it comes to systems of apartment ownership, form does not determine function. This supports the first prediction of the credibility thesis outlined in the introduction to this special issue: that "different institutional forms perform identically, inasmuch as identical forms perform differently". The examples show that the legislative form is not sufficient to explain the experienced outcomes for apartment owners and residents, and therefore is not sufficient to explain the extent to which the institution of apartment ownership more generally is accepted.

Rather, the institution of apartment ownership is given credibility through the ways in which those formal laws, regulations and policies are negotiated, enacted, and ultimately amended in response to social norms and expectations about what it means to own an apartment. In practice, institutions of apartment ownership are much more diverse, are influenced by their application in specific social, economic and political contexts, and shift and adapt over time. This is consistent with the credibility thesis, which posits that institutions are best understood

as complex, dynamic and endogenously constructed.

This insight has important implications for jurisdictions seeking to amend their apartment ownership laws or introduce new ones. Condominium ownership systems have a strong history of policy transfer, with jurisdictions that are seeking to introduce new condominium laws routinely looking to other jurisdictions' laws as a basis for their own legislation. However, whether it is the British Columbian adaptation of NSW legislation, or the Quebecois adaptation of French laws, it was evidently necessary to respond to local contexts. It is not feasible to simply transfer a legislative framework from one jurisdiction to another and expect it to be credible.

Transferred legislation can become credible over time as it is adapted to its new context: "copying is the exception; hybrids are the rule", as Marsh and Evans (2012: 480) summarise. Our review showed this in the case of apartment ownership systems, just as is the case for policy transfer more generally. Recent research has recognised that policy transfer seldom involves the transfer of fully-formed policies (e.g. Peck & Theodore, 2010; McCann & Ward, 2012), that "external sources of policy change are rarely successful unless locally articulated", and that in order to be effective, ownership of a policy by local communities is essential (Evans & Barakat, 2012).

The credibility thesis also recognises that the ever-changing context within which an institution sits means that the institution's function must also change if it is to remain credible, explaining why endogenous adjustments that are incremental and adapt to changing conditions in context are likely to be more credible than sweeping changes seen to originate from 'outside'. Conversely, those contexts can also change over time in response to the introduction of new legislative frameworks, as they respond to, challenge and incorporate these frameworks into everyday understandings and practices. In the case of apartment ownership, this can be seen in how social expectations around property ownership shift over time: with incremental shifts in social norms aligning with the legislative reality. One interviewee stressed that expectations are still set by historical attitudes:

People say 'the board can't tell me what I can and can't do. I bought my condo'. They're not understanding the whole concept of condo ownership. (Property Manager, Massachusetts, 02.2016, Ref. 2)

In another case, an interviewee recognised that over time, social expectations adjust:

I think the property interests that strata [condominium ownership] creates are changing and ... the sheer prevalence of strata means that we need to be recognising that if ownership and meanings of ownership are changing within strata then our broader understanding of what it means to own interests in land may also be shifting ... understandings of ownership are societal and depend on the prevalence of how things are owned, so given that strata [ownership is increasing] ... we're going to hit 50% [strata ownership] soon ... if land is held primarily within strata then what it means to own is going to shift, and the norm is going to be ownership within strata. (Academic, British Columbia, Professor (Dr.) Douglas Harris, 02.2016, Ref 78)

Importantly another interviewee indicated that different meanings of property ownership can also arise from changes in legislation. Singapore amended legislation to enable 'collective sale' of apartment buildings with less-than-unanimous consent in 1999 (Christudason, 2005).

Collective sales receive much media attention in Singapore as they often raise the issue of maximising land use through redevelopment versus violation of private property rights. Over the years because of waves of collective sales, people have come to the realisation that buying a strata property is different in terms of their ownership rights. When you move into a strata title, you know that is a majority rules decision. (Academic, Singapore, Associate Professor

(Dr.) Alice Christudason, 07.2016, Ref. 116)

The idea that legislative frameworks and norms change in concert with each other offers important insights into the phenomenon identified in the growing literature on 'policy mobilities': the ways global, neoliberal hegemonies colonise places around the world. Stone (2004) argues that we are seeing more policy transfer because of the influence of major international actors passing judgement on the preferred legislative arrangements at a regional or even global scale. We see this in the case of apartment ownership systems with the UN's guidelines for post-Soviet states (Economic Commission for Europe, 2002) and the USA's Uniform Law Commission's identification of condominiums as the preferred ownership form (Uniform Law Commissioners, 1980).

Arguably, these attempts at a unified approach to apartment ownership sit within a larger agenda of reforms to enable urban consolidation within a neoliberal approach to city development, driven by mobile global capital. This in turn raises important questions about the effects of such approaches and the expectation that social and cultural norms will fall in line.

However, the credibility thesis posits that credibility does not imply consensus. Policy transfer literature also tells us that multiple 'agents and agencies' (i.e. people and organisations) are involved in the transfer and adaptation of policies and that "at different times a particular agent/agency may have more or less of a role, with different agencies/agents coming to the fore" (Marsh & Evans, 2012: 479). This means that policy transfer is inherently political and often contested. We see this also in the case of apartment ownership systems, where multiple 'agents and agencies' are involved in both policy development and policy reform.

We suggest that any imposition of a legislative framework to accommodate neoliberal hegemonies will be a heavily negotiated process, resulting in endogenous change to any system. We continually see push-back to such attempts at unifying and standardising apartment ownership institutions. For example, despite the fact that the US has a 'Uniform Condominium Act', significant differences between condominium systems persist between the US states.

Our paper has only scratched the surface of these wider political ramifications. We see that there is much potential for future research on apartment ownership systems (and other forms of multi-owned property ownership) to further tease out these broader policy mobilities and socio-political contexts. This will require much more in-depth analysis of the historical, geographical, social, cultural, political and economic contexts in which apartment ownership systems have been introduced and adapted than we have been able to provide here. However, by drawing together the disparate academic consideration of 'credibility' and 'policy transfer' we have provided a glimpse at the potential for such analysis.

One final conclusion is that the social, economic and political contexts that shape the credibility of multi-owned property ownership around the world also have broader implications. They include some fundamental issues, such as: societal views on individualism and collectivism (Lehavi, 2016) and the social meaning of property ownership (Ronald, 2009); the systems and structures of local and regional housing markets; and the relative importance of participatory democracy or hierarchical power relationships (Lehavi, 2016) in local and regional politics. As such, the experiences of urbanisation more broadly can be expected to reflect the experience of apartment ownership. There is much to be gained from garnering a better understanding of what makes multi-owned property ownership systems credible.

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