



OTB Research Institute



# German cooperatives: property right hybrids with strong tenant security

Marietta Haffner & Daniel Brunner

OTB Working papers 2014-07



OTB – Research for the Built Environment  
Faculty of Architecture and the Built Environment  
Delft University of Technology  
Julianalaan 134, 2628 BL Delft, The Netherlands  
Tel. +31 (0)15 278 30 05  
E-mail [mailbox@otb.tudelft.nl](mailto:mailbox@otb.tudelft.nl)  
<http://www.otb.tudelft.nl>

OTB – Research for the Built Environment seeks to make a visible contribution to society by helping to solve social problems in the field of the built environment. We do this by means of our specialist scientific research in this area as part of Delft University of Technology and in close cooperation with faculties. The emphasis lies on scientific impact and social relevance. We aim to increase the significance of scientific research, while continuing to focus on the vital exchange between problem-oriented and practically applicable research.

# German cooperatives: property right hybrids with strong tenant security

Marietta Haffner

TU Delft, Faculty of Architecture and the Built Environment, OTB – Research  
for the Built Environment, The Netherlands/  
Steunpunt Wonen/ RMIT University/ Cambridge University  
e-mail: [m.e.a.haffner@tudelft.nl](mailto:m.e.a.haffner@tudelft.nl)

Daniel Brunner

Philipps University of Marburg, Germany, Institut für Genossenschaftswesen  
e-mail: [brunner@wiwi.uni-marburg.de](mailto:brunner@wiwi.uni-marburg.de)

Working papers 2014-07

## Abstract

Cooperatives in Germany can be considered a hybrid tenure, which offers a bundle of property rights that lies in between renting and owning. Being a cooperative occupier of a dwelling should allow for more secure occupancy rights than ordinarily available to renters and less secure occupancy rights than ordinarily available to owner-occupiers. This claim is evaluated in terms of how the formal (in the sense of legal) bundles of rights of cooperative housing differ from those in conventional renting and owner-occupation. The text draws from the literature on economic approaches to property rights in an effort to clarify the concept of secure occupancy. Here, this concept is defined as a certain bundle of formal rights associated with occupying a dwelling. In cooperative housing, the bundles of property rights that secure occupancy is defined to exist or turn out to be different from those associated with renting or owning. As an analysis of market friction and efficiency suggests, the property rights are quite secure and clearly defined from a legal point of view.

**Keywords:** Germany, property right, ownership right, tenant cooperative

## Introduction

Germany is known as a country of tenants (Table 1). Less well known is the fact that rental housing is provided by many types of landlords, one of these being housing cooperatives (*Genossenschaften*). In 2006 housing cooperatives owned five percent of the housing stock. Together with the municipal housing companies, these cooperatives comprised Germany's not-for-profit rental sector (regulated by the 1930 *Gemeinnützigkeitsverordnung* and the 1940 *Wohnungsgemeinnützigkeitsgesetz*) until 1990. Not-for-profit housing in Germany is not about the type or organization, but is equated with a corporate income tax exemption. Most housing cooperatives still have that status (see below).

A cooperative is an organization that owns a number of dwellings. Ownership rights arise when the members invest in the cooperative by buying a share (*Geschäftsanteil*). Even though 'owning together' is the essence of any cooperative, traditionally in Germany it is considered a type of rental tenure – here called a tenant cooperative – because the share of ownership is relatively low, and the tenants also pay a monthly rent. Nowadays, other forms of cooperative ownership also exist with varying degrees of ownership, including one that closely resembles homeownership.

Table 1 Estimated distribution of providers/owners of dwellings\* in Germany, 2006

Providers/owners of dwellings			% of stock	Number of dwellings (x1,000)
Total	100			39,617
Owner-occupied sector	40			15,960
Rented sector	60			23,657
* Small providers		37		14,507
* Professional landlords		23		9,150
Private housing companies			10	4,059
<b>Housing cooperatives</b>			<b>5</b>	<b>2,079</b>
Municipal housing companies			5	2,120
Other government housing agencies			1	206
Other landlords with subcontracted management			1	453
Other providers, such as churches			1	233

Source: BBR (2007a:198).

\*) Includes dwellings subsidized with bricks-and-mortar subsidies.

The policy on the traditional form, the tenant cooperatives, is to provide secure, long-term and affordable housing to the tenants based on cost price rent, preferably at below-market rents, in exchange for their initial investment. According to the federal government, the members have better security of tenure than ordinary tenants would have (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004). However, no evaluation has yet been made of the benefits of housing cooperatives in Germany. At best, there is a description of the situation by an expert commission, found in the report of the *Bundesministerium für Verkehr, Bau- und Wohnungswesen* (2004).

Many aspects of cooperative housing could be evaluated. The evaluation of cooperative housing could be about the mutually supportive communities that the occupants may have established or it could be about the role of the cooperative in strengthening neighbourhood social structure and identity (The Commission on Co-operative and Mutual Housing, 2009). Co-operative housing could also be evaluated on the extent that tenant participation (collective action) is stimulated (Bengtsson, 1998). Last but not least, from an economic point of view, efficiency of the tenure form can be evaluated. Eretveit and Theisen (2013) for example evaluate whether different financing arrangements per dwelling reflect in the transaction price. The present paper is also interested in the efficiency of this tenure form and seeks to clarify the content of the different packages of property rights on the

spectrum from renting to owning with a special focus on the operationalization of tenant security and its impact on market efficiency. The resulting overview of the distinct (or not so distinct) features of the different bundles of property rights will provide grounds for refining the concept of secure occupancy. Ultimately, this contribution aims to deepen the understanding of the property rights that allow for secure occupancy.

### **The general aims of the tenant cooperative in Germany**

German housing cooperatives started out as tenant cooperatives. In the beginning the sector was an amateur, grass-roots sector and has evolved into the third pillar of housing tenure, a growth nurtured by the German government. The description of this development follows.

#### ***Roots***

German housing cooperatives, like cooperatives in general, stem from movements at the end of the 19<sup>th</sup> century. They were founded with the aim of reducing the housing shortage through self-help. In the beginning, they supported their members in building single-family houses but were constantly faced with financial constraints. Consequently, the cooperatives switched their focus to apartment buildings.

The cooperative sector had lower average costs per housing unit than other tenures. That explains its rapid growth: from 50 to 964 housing cooperatives between 1890 and 1910 (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004:116). After WWI, the state subsidized the construction of new houses, and the number of housing cooperatives subsequently reached a maximum of about 4,000 in 1928.

The 1940 Nonprofit Law (*Wohnungsgemeinnützigkeitsgesetz*) arranged the nonprofit status of municipal/public landlords and cooperative landlords. A dividend was limited to four percent and the corporation was exempted from corporate tax. Furthermore, bricks-and-mortar subsidies became available in exchange for the municipal right of allocation.

After WWII, there was a great shortage in dwellings on the West German housing market. From the 1950s on, the construction of most new dwellings made use of state object subsidies. These subsidies marked the beginning of Germany's "social" housing (first and second Housing Construction Law (*Wohnungsbaugesetz*), 1950 and 1956 respectively). Because of the higher building costs and the changing needs of professional management, the small cooperatives began merging. Therefore the number of cooperatives decreased by 400 to 1,235 from 1953 to 1978 (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004).

In the former East Germany (GDR), housing cooperatives were an instrument of the government's housing policy. The cooperatives were used along with state-owned housing organizations to expand the socialist housing stock. As a consequence, about two-thirds of the cooperatives in the western part of Germany own less than 1,000 housing units; in contrast, most of the largest housing cooperatives are located in the eastern part. About three-fourths of the housing stock in the west was built before 1970, whereas about 58% of that in the east was built after 1970. About 78% of the apartments in the west are located in buildings with up to four floors, compared to 34% in the east, where about 65% of the apartments are in buildings with five or more floors (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004:122-123, 127, 132-133). Therefore, housing cooperatives in the eastern part of Germany have a bigger stock of housing units, and these apartments are newer than those of the cooperatives in the western part.

In 2001, the government realized that the housing shortage had been solved. There were enough units available to house everyone (*Bundesregierung*, 2001: 76-80). Consequently, housing policy shifted from subsidizing broad segments of the population to targeting financial aid at households in need of support (Busch-Geertsema, 2004; *Bundesregierung*, 2006). In legal terms, the second *Wohnungsbaugesetz* was replaced by the 2001 Housing Subsidy Law (*Wohnraumförderungsgesetz*; WoFG). Its aim was to support households having problems in gaining access to the housing market. Nowadays, Germany has roughly 2,000 housing cooperatives. Their mission is to provide accommodation at cost or below-market prices (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004:3).

### ***Recent history***

This century, cooperatives have been put on the political agenda. An ‘expert commission’ was set up in 2002 to make recommendations on securing the future of cooperative housing as the third type of ownership (‘third way’) alongside the rented and owner-occupied sectors. The government commissioned this report in light of the expected demographic trends, viz. population decline and an aging population. The report led to the phasing out of state support. To ensure that social conditions would not deteriorate, the government deemed it necessary to call upon private individuals to take more responsibility, help themselves and be more engaged.

In the summary of the report, which was published in 2004, the expert commission made recommendations on how to strengthen the position of housing cooperatives in several areas: funding, communication and marketing, facilities for the elderly, and subsidies (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004). The reason was that housing cooperatives produce a public good in an appropriate manner and thereby contribute to the development of civil society.

This contribution consists of:

- Guaranteeing safe and good-quality housing;
- Organizing the social embedding and interaction of residents who would otherwise depend on public benefit;
- Experimenting with new forms of housing that fit in with new housing concepts;
- Promoting local and community-based integration of ethnic minorities and socially isolated groups (e.g., single parents, the elderly, disabled persons, other people in need);
- Cooperating with municipalities to maintain and stabilize neighborhoods by reaching out beyond the own housing stock.

In a reaction to the advice of the expert commission, the government of 2002 saw cooperative housing as the third type of ownership, alongside the rented and owner-occupied sectors (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*, 2004). Successive governments embraced cooperative housing as the third pillar of housing, alongside renting and homeownership ([www.bmvbs.de](http://www.bmvbs.de): Stabilisierung und Weiterentwicklung des genossenschaftlichen Wohnens, last accessed 20 February 2009;

[http://www.bmvbs.de/DE/BauenUndWohnen/Wohnungswirtschaft/GenossenschaftlichWohnen/genossenschaftlich-wohnen\\_node.html](http://www.bmvbs.de/DE/BauenUndWohnen/Wohnungswirtschaft/GenossenschaftlichWohnen/genossenschaftlich-wohnen_node.html), last accessed 29 May 2012).

The cooperative principles of identity, self-help, self-government and self-responsibility are due to become more relevant in the future, given the demographic trends – growing versus shrinking regions and the aging population – and their effects on the social systems. In that light, the German government envisions cooperative housing as the third pillar of housing. Besides providing affordable and safe housing of good quality, the cooperatives are expected to serve wider social aims such as strengthening neighborhoods, providing new forms of housing and wealth-building. It should be noted that the cooperatives have different market positions, depending on the region. In many cities in

eastern Germany, housing cooperatives struggle with vacancies. In western Germany, cooperatives in regions with a tight housing market (e.g. Frankfurt) use waiting lists to handle the demand for their apartments.

An experimental program was set up in 2004 (*Experimenteller Wohnungs- und Städtebau, ExWoSt*) comprising two projects: (1) private pension schemes and housing cooperatives; and (2) models of cooperative housing that tap into the potential of cooperatives. The former led to the integration of housing cooperatives in the *Riester-Rente*, a subsidized private pension system. The latter illustrates the cooperatives' potential in three areas: "raising the attractiveness of housing cooperatives for existing and new target groups, strengthening the contribution of cooperatives to urban and neighborhood development, setting up new services and umbrella organizations for the support of new cooperatives and community housing projects." (translated from: *BMVBS/BBR*, 2007:4).

In 2010 a research project was set up to evaluate the expert commission's recommendations (*Bundesministerium für Verkehr, Bau- und Stadtentwicklung*, 2010). It was shown that only a small fraction of the housing cooperatives planned to establish a savings option (*Spareinrichtung*) to help their members increase their investment in the cooperative (p.55). Most of the cooperatives offered a dividend of about four percent to strengthen their members' engagement. Given the external communication, several projects tried to raise awareness of housing cooperatives' special form (p.57 f.). Housing cooperatives regard secure tenancy as their advantage in the housing market (particularly, no eviction and the long-term right to rent an apartment) (p.63).

### **Efficient behavior based on property rights**

In his approach to property rights, Ruonavaara (1993:12) bases his typology on a moderate constructivist understanding of housing tenure, where tenures change in time and place, constructing in due course their necessary and contingent properties (rights and duties). The main types of tenures are defined in terms of their necessary properties. Ownership rights consist of possession rights plus the right of disposal. Possession consists of the right of use, wherein Ruonavaara distinguishes two aspects: "the entitlement to use the dwelling for satisfying housing needs and the security of tenure". The right of control concerns decisions on how to use and alter the dwelling.

Marcuse (1994:24) takes an approach based on judicial reasoning (following Hohfeld, 1969) and speaks of the bundle of ownership or tenure rights. He defines this concept as "a set of rules fixing what other people may or may not prevent me from doing to the thing [property], and what I may or may not prevent them from doing to the thing." In this vein, he lists 12 key rights (see also Elsinga, 2005):

1. Privilege to occupy and use for shelter
2. Duty to make initial or current payments for exercises of rights or privileges (the duty would be about paying for the production costs as distinguished from transaction costs (see below; Furubotn and Richter, 1991))
3. Rights to residential services, utilities
4. Security, privilege of continued occupancy; immunity from eviction, right to protection in occupancy
5. Right of privacy, privilege not to have others invade unit, right to exclude others
6. Privilege of broader uses, privilege not to have use restricted
7. Power to alter prevailing rights, privileges, powers, or immunities by physical acts, payments, or political or judicial actions
8. Privilege to modify, make physical changes to the unit

9. Right and/or duty of maintenance and repairs
10. Right of disposition or allocation of subsequent or simultaneous use, immunity from restrictions on disposition by user or use
11. Right of profiting from a disposition, immunity from restrictions on disposition, including taxation
12. Right to public subsidy or support

The economic theory of property rights distinguishes the rights of private ownership of an asset in similar terms; in short:

- The rights or powers to use or consume
- The rights to exclude others
- The rights to change form or substance (maintain or repair)
- The rights to transfer some or all property rights
- The rights or powers to obtain or earn income

However, individual authors group them differently and do not necessarily list them all. Eggertsson (1990), for instance, includes the right to physically transform a resource under the rights to use, while Furubotn and Richter (2005) group the power of management under the right of alienation. The rights to exclude and the rights to earn income are not always listed, though one could speculate that they can be considered an extension of the rights to use. Jaffe (1989), on the other hand, distinguishes the right to use, the right to exclude and the right to transfer.

The advantage of a classification based on property rights theory is that it assumes that – by definition – efficiency will be achieved when property rights are universal. The theory refers to efficiency in the sense of maximizing the present value of property rights, thereby implying that individuals maximize their utility given their budget constraints (Demsetz, 1967:355/6; Furubotn and Richter, 2005:108). And universality refers to the fact that all resources should be owned or ownable by someone, except when the resources are so plentiful that they are not considered scarce (Posner, 1972). Together with the rights of exclusivity and transferability, these characteristics allow the owners of the property rights to use their property efficiently by maximizing its value and, if necessary, to move towards more productive and higher-yield uses.

The development of property rights and the tendency towards economic efficiency take place, according to Demsetz (1967:348), because and when externalities need to be internalized. This will be achieved when the gains of internalization become greater than its costs. In his pioneering work, Coase (1960) showed that under zero transaction costs, property rights can be reallocated to overcome problems caused by externalities. The more usual case of non-zero transaction costs, consequently, requires careful “devising and choosing between social arrangements” (p.44). “Property rights were thus viewed both as the conceptual key that unlocks many of the puzzles of economic organization and as the means by which to realize superior economic performance.” (Williamson, 1998:28). When it became apparent that the legal system could not guarantee all contracts “perfectly and costlessly” (Williamson, 1998:28 citing Furubotn and Richter, 1991:7-8), “the governance of contractual relations walked in.” (Williamson, 1998:28). In a situation of governance without a ‘strong’ legal framework, property rights may be difficult to enforce (Kim and Mahony, 2005:235). This situation arises when imperfections in the market deliver “unclearly defined and/or insecure property rights”. The former imply “rights that have not been assigned to the contractual party with the economic incentive and ability to maximize utilization of the resource” whereas the latter are about “rights that can be appropriated by others.” (see below). These imperfections will lead to transaction costs. As long as these do not surpass the benefits that come about from the allocation of property rights, contracts will be used to allocate property rights.

## Secure occupancy and property rights

To understand the relation between property rights and the secure occupancy of dwellings, it is important to define the rights to exclude. These can be described as those secure occupancy rights of maintaining occupancy, protection from restricted use and protection from eviction. This could be called the **narrow** definition of secure occupancy or security of tenure that Hulse et al. (2011:26) call “Control over length of stay and timing of moving out of dwelling (subject to meeting tenancy obligations).” That narrow perspective is in line with the definition of Kim and Mahony (2005) cited above: property rights are neither unclear nor insecure.

However, we can also propose a **broad** definition of secure occupancy, to include all property rights. Consider the following definition advanced by Flood (2002:7), which is based on the one developed by UNCHS (1999):

Security of tenure [secure occupancy] refers to a specific set of legal rights accorded to occupants of housing, by which they are entitled to access and enjoy the premises:

*“an agreement between an individual or group to land and residential property which is governed and regulated by a legal and administrative framework... The tenure can be effected in a variety of ways, depending on constitutional and legal frameworks, social norms, cultural values and, to some extent, individual preference.”*

The idea behind a broad definition like this one (see also Hulse et al., 2011) is that merely being protected from eviction may not give households a general feeling of security if the unit is not affordable or if they cannot make a home out of it. To take this broader occupant’s perspective into account, the broad definition of secure occupancy that will be used here will simply state that the more property or ownership rights one holds, the more security one is assumed to have. The expectation is that homeowners will prove to have the most property rights and conventional tenants the least, leaving cooperative tenants with a set of rights in between these two. We base this expectation on the German government’s claim of stronger property rights for cooperative tenants than for normal tenants (see above). First, however, the types of cooperative rental tenures will be introduced against the backdrop of the German housing market.

## Types of cooperatives in Germany

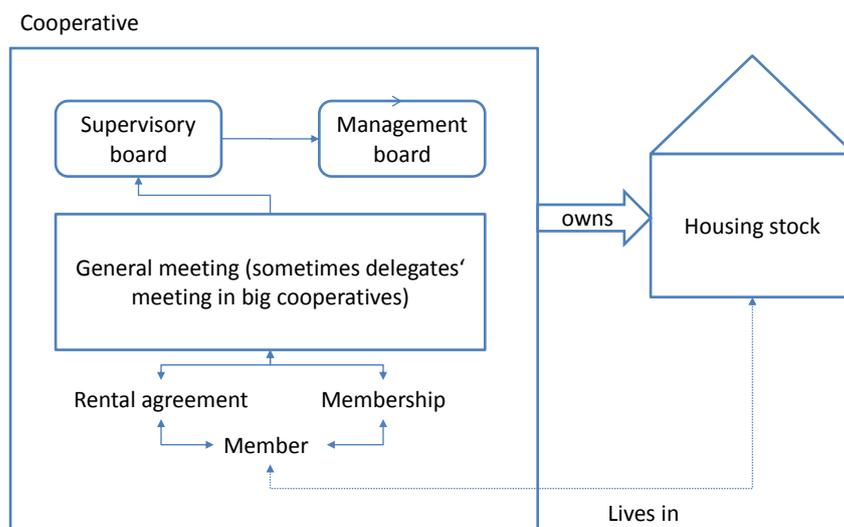
In order to be able to assess secure occupancy for the different tenure types of renting, owning and cooperative housing, first cooperative housing is introduced more in detail. The cooperative has a special legal form (registered cooperative, *eG*), which provides a framework for legal relations between the members and the cooperative and between the various bodies respectively. In its basic form (Figure 1) the members of the cooperative participate in the general meeting, at which time they elect the advisory board. That board often elects the members of the management board. Alternatively, the general meeting elects the member of the management board directly. The management board manages the cooperative independently. The cooperative owns the housing units and the members can rent them on the basis of a rental agreement.

Traditionally, cooperatives were tenant cooperatives in which tenants pay rent (to cover the production costs, see above). The special feature is that tenants invest in the equity of the cooperative (also to cover production costs) and thereby become members of the cooperative. Their investment usually amounts to one percent of the building costs. The investment allows the tenants to earn a dividend on

their share of the equity (§ 19 *Genossenschaftsgesetz, GenG*). Typically, for the historical reasons mentioned above, this dividend comes to four percent.

The basic form can vary in a number of ways. The main three forms of housing cooperatives set forth below can be regarded as extensions of that basic form. One type of extension entails more ownership rights/responsibilities for the members (form 1), another type building up more housing equity (form 3). Form 2 is a limited combination of both types; it entails building up equity, which is compensated by a stronger security of tenure (ownership right). In fact, it is regarded as the form that comes closest to homeownership. The following profiles give more detail on these types.

Figure 1 Basic form of housing cooperative



Source: Own elaboration.

### (1) Emphasis on cooperative ownership

In the basic form, the members have limited influence on decision-making. Therefore some cooperatives seek to strengthen the members' involvement by transferring more rights and responsibilities to the membership or to groups of members (e.g., the community of an individual building). The community deals with matters on a regular basis (e.g., at monthly meetings) and makes decisions on any issues that arise. These issues could concern the refurbishment of shared facilities, design and maintenance of outside facilities, etc. Often, a community has a small budget to spend. If it needs a larger budget, it can request an increase from the management board. This cooperative form can thus be considered strong on tenant participation.

### (2) Emphasis on residential rights

Another form takes an owner-occupier approach to property rights by granting a permanent residential right. It is regulated in the Apartmentownership Law that also regulates the ownership of condominiums (§§ 31 ff. *Wohnungseigentumsgesetz*). This extension gives the owners the right to rent

out or bequeath their permanent residential right, as well as more rights to determine usage, to lease/rent the apartment and to make modifications in it. Some cooperatives offer permanent residential rights to their members, who may want to acquire these rights to avoid paying the monthly rent (so, only paying service costs).

The price of the residential rights (production costs, see above) depends on the duration and the details of the individual agreement. As this form comes closest to home ownership, its price must also come closest to the price of an owner-occupied dwelling (*ceteris paribus*).

### (3) Emphasis on building up equity

Certain types of cooperatives allow for silent or sleeping partners/investors and savings options for members (almost 50 of the 2,000 cooperatives, called *Genossenschaft mit Spareinrichtung*). There are several scenarios of equity build-up: the one percent that is typical of tenant cooperatives without special needs; higher levels for investors, who may or may not be tenants of the cooperative; and some arrangements in between these two. The members benefit from a higher interest rate compared to that available on a normal bank account (Hoyer, 2010a:106; 2010b).

## **Property rights compared across tenures**

Most housing cooperatives in Germany are rent-oriented and may be classified under the heading “basic form”. Because rental agreements between a housing cooperative and its members fall under Germany’s tenure security, these rental agreements normally do not differ from those in the rented sector. Formally, in many respects, there are thus few differences between conventional renting and the basic form of cooperative renting when the rental agreement is concerned.

One conspicuous difference, however, lies in the membership status of the cooperative tenant. A housing cooperative’s primary objective is to aid its members. This is usually done by providing their members with housing units. Therefore, once one has become a member, one can close a rental agreement. This differs from conventional renting; the cooperative tenant is not only renting an apartment but is also a shareholder in the cooperative. Shareholders will be treated equal in the sense that they will get the same rights and duties.

The important differences between renting and cooperative renting will be distinguished in this section in order to identify the different bundles of property rights associated with different tenure forms. In the next section it is shown that the basic form of cooperative renting differs from homeownership. The exercise is repeated in following section for the cooperative form of the permanent residential right, the form that is expected to resemble homeownership most closely.

### ***Basic cooperative tenant form***

- The rights or powers to use or consume

A rental agreement for a cooperative unit does not normally differ from one offered by any other landlord because of the German legislation to protect tenants. Typically, a tenant is allowed to live in the apartment with his family or close relatives and use it as a residence. The cooperative tenants’ residential use is the same as for homeowners. Unlike a normal renter, a cooperative tenant due to his membership has the right to defend his own interests at the general meeting. He could also apply to join the supervisory or management board. In that sense, every member can actively participate in the cooperative (self-governance; §§ 9, 43 GenG). That opportunity is even greater in the modified form

described above that emphasizes cooperative ownership/responsibilities (form 1). But in comparison with homeownership, cooperative membership offers less opportunity for self-governance.

- The rights to exclude

Only under unusual circumstances (e.g., the landlord's own use of the dwelling, or the landlord's inability to make an economically 'acceptable' profit) would tenants be in danger of getting evicted. Cooperative tenants have greater protection than ordinary tenants in the sense of enjoying better security of tenure. The reason is that cooperative tenants are part-owners. Homeowners enjoy the strongest tenure security.

- The rights to change form or substance

Normally, the cooperative tenant has the obligation to undertake maintenance and improvement. In many cases, cosmetic refurbishment is required every 3-5 years.

The cooperative itself has the right to undertake major renovations (e.g., energy-saving renovation) and raise the rent afterwards. The increase is limited to 11% of the renovation costs (§ 559 *Bürgerliches Gesetzbuch*). In this respect, there is no difference between the cooperative tenant and the conventional renter. The homeowner, in contrast, is free to decide if and when to undertake maintenance and improvement.

The cooperative tenant is permitted to make modifications (such as painting the walls) but not structural changes. He differs in this respect from the conventional tenant in that the cooperative tenant might obtain permission to modify or adapt the unit. The contract for the dwelling will stipulate how this could be arranged. The difference with homeownership is that the owner has the full right to modify and adapt the dwelling.

- The rights to transfer some or all property rights

The cooperative tenant is not normally allowed to sell his apartment. Nor is he allowed to sublet it without permission. On an individual level, there is thus no difference between the cooperative tenant and the conventional renter, whereas both types of tenants differ from homeowners in this respect.

Every cooperative will arrange the right to sell the building in the rental contract. Thus as a collective, a housing cooperative can decide to sell or be taken over by an investor. Such a transaction requires a three-quarters majority in the general meeting (§ 78 *GenG*). In that regard, the property rights are more secure for the cooperative tenant than for the conventional tenant.

- The rights or powers to obtain or earn income

The situation regarding return on investment is different for each of the three tenures. While conventional renters have no right to any return, the homeowner receives the full amount that is earned: the homeowner obtains a direct return from 'renting' plus capital gains/losses.

Homeownership thus generates income from the dwelling because it is regarded as an investment good for which the owner had paid the acquisition price (Hall and Jorgenson, 1967; Poterba, 1984).

In a cooperative, each member is a tenant on the one hand and a provider of capital (even if it is a small amount) on the other (cooperative principle of identity). As owners, they will normally reap the profits that must be returned to the members of the cooperative. That is because the cooperative is a nonprofit organization. The dividend or direct return is determined by the member's share in the cooperative (§ 19 *GenG*) but seldom exceeds four percent. The remuneration will usually take the form of a lower rent, which is deemed a just compensation for investing in the cooperative.

The indirect return will seldom be speculative. In this regard, cooperative membership differs from homeownership, as cooperative dwellings build up equity in the very long term. The equity will suffice to dampen rent increases for cooperative units. Because of the bricks-and-mortar subsidies, housing cooperatives were not allowed to sell their subsidized housing stock for a certain period of time (second *Wohnungsbaugesetz*). Therefore, the objective of most cooperatives was to build up their housing stock and pass it on to the next generation. Nowadays, few transactions of cooperative housing stock take place on the housing market (*BBR 2007b, BBR 2011*).

The next question that arises with regard to return on investment is whether the right to obtain public subsidies should be considered a property right. If eligibility for public support is tied to a certain tenure type (a commodity price-lowering subsidy; Shroder, 2002: 410) and not the person applying for it, its receipt will here be considered income earned from the asset (higher earnings than would otherwise be the case). Accordingly, housing allowances and similar subsidies that take the income of a household as their starting point will be ignored.

No such general right subsidies exist for any dwelling in any tenure. There is no general right to tax breaks for conventional renters, cooperative tenants or homeowners (*Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004*). Nor is there a right to 'social' housing, as this concept is not represented in the German housing system. Bricks-and-mortar subsidies would only be temporary. They would be awarded in exchange for limits on rent in combination with the imposition of allocation rules that take household income into account (Droste and Knorr-Siedow, 2007; Haffner *et al.*, 2009). Throughout most of its history, cooperative rental housing has been treated like rental housing in this regard. Homeowners are also eligible for this type of subsidy. But in their case, eligibility is based on household income and not on the dwelling price. Therefore, these subsidies that are linked to homeowner income are ignored here.

Then there is a special subsidy for housing cooperatives at the federal level. Cooperatives that have been operating under the nonprofit regime can still benefit from a tax exemption. This situation is the result of the deregulation of the Law for Nonprofits (*Wohnungsgemeinnützigkeitsgesetz*) in 1990. Therefore, the tax exemption is currently limited to rent-oriented housing cooperatives and applies to their activities pertaining to renting. This implies that non-rental activities are limited to ten percent of the annual revenues (*Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004:74*). Income tax is due on that ten percent and on all of the income in excess of this percentage. Almost 2,000 cooperatives operate under the umbrella of the *GdW Bundesverband deutscher Wohnungsunternehmen*, which is the national organization for the former nonprofit organizations of the landlord organizations of the federal states. Of that total, almost 1,400 use the tax exemption for corporate income tax (*GdW Bundesverband deutscher Wohnungsunternehmen, 2004*).

Other tax subsidies are more difficult to determine (Oxley and Haffner, 2010; Haffner and Oxley, 1999). Owner-occupied dwellings are treated as consumption goods for income tax. That in itself could be considered a subsidy, as dwellings are considered investment goods. (In principle, all rental housing – cooperative and conventional – is treated as an investment good for income tax and corporate tax purposes.) In order to determine what a fiscal subsidy is, this study adopts the line of reasoning followed in German policy. That means that homeownership is not eligible for any tax subsidies, while renting is. There is a standard depreciation deduction for landlords investing in rental housing. It is available to other investors as well, for both corporate and income tax.

The standard depreciation deduction is also available to cooperative organizations for corporate income tax (if the organization pays tax). Any deduction in costs for the landlord/cooperative can be passed on to the tenants in the form of lower rents. This will increase the tenants' return on equity. The extent to which this is actually done will depend on what the market can bear. It is more likely to

occur in the case of a cooperative whose policy it is to provide affordable housing (see above) than in the case of a professional landlord.

### ***Cooperative ownership***

This section expands on the permanent residential right, form 2 above (§§ 31 ff. *Wohnungseigentumsgesetz (WEG)*). This real property right, which comes closest to homeownership, has to be entered in the land register (§§ 31, 32 *WEG*) and can be granted for either a given or an unlimited period. The permanent residential right entails more rights than a contract for the basic form of cooperative renting. That is why we prefer to call this form ‘cooperative ownership’. How this transfer of rights takes place in detail depends on the individual agreement (contract between the cooperative and the member), as German law allows for various arrangements (§§ 33, 35, 36, 37 *WEG*). The member will be called the ‘cooperative owner’ in the description of the property rights that follows.

- The rights or powers to use or consume

The cooperative owner is free to use the apartment and the common facilities (§ 31, 33 *WEG*). E.g., the owner is allowed to lease/rent the apartment. Individual arrangements can be made. But the owner has to consider the neighbors’ rights and take care of the common facilities (§ 14 *WEG*). In general, this right of usage is the same as for an owner-occupier.

- The rights to exclude

For the duration of the right, the owner of the building (the cooperative) has very limited rights. Nearly all rights and responsibilities are transferred to the owner of the permanent residential right – that is, the cooperative member, in this case one with special rights (cooperative owner). This right of usage (which can be arranged temporarily or for unlimited time) is generally the same as for an owner-occupier.

- The rights to change form or substance

The right to modify is subject to the stipulations in the individual agreement. This right could thus be similar to that of a cooperative tenant in the basic form. But it could also be similar to the right that a homeowner would have.

The right and obligation to undertake maintenance and improvement is subject to the individual agreement between the cooperative and the cooperative owner. Thus, it could be similar to that of a cooperative tenant in the basic form. But it could also resemble the right that a homeowner would have.

- The rights to transfer some or all property rights

The permanent residential right can be sold, rented out and inherited (§§ 33, 35 *WEG*). The cooperative owner can take out a loan on the right (§ 42 *WEG*). In this case it does not differ from the right of an owner-occupier.

However, it can be agreed that the owner is only allowed to sell the right with the cooperative’s permission (§ 35 *WEG*). It can be agreed as well that under special conditions the right falls back to the cooperative (reversion, or *Heimfall*) (§ 36 *WEG*). Normally the cooperative would then have to compensate the owner of the right and pay the owner the current value.

- The rights or powers to obtain or earn income

The cooperative owner has the right to receive a direct return on his investment as a result of investing in the equity of the cooperative at the time of acquisition and would not have to pay any rent.

If the owner has the right to sell or he has to give it back under certain special conditions (reversion), he either receives an indirect return (capital gain) or has to bear the loss. If the right was granted for a limited time, the owner normally does not receive a capital gain or bear any loss.

The right to public support does not differ from that associated with the basic form (see previous section).

### **Evaluation of secure occupancy**

Our analyses of property rights suggest that cooperative housing offers the residents bundles of property rights that differ from those for renting or owner-occupation. It should be reiterated that cooperative housing does not formally exist as a separate form. In that light, Table 2 summarizes the property rights of the basic form of the cooperative, which we have called the tenant cooperative, and the form that comes closest to homeownership, which we have called the ownership cooperative. What these two types of cooperatives have in common is that members of the cooperatives share the ownership of the building through their cooperative organization (the cooperative). The basic principle underlying the shared ownership is investing in the equity of the cooperative and getting some advantages in return. These may take the shape of below-market (or cost price) rent or stronger rights of ownership resembling those of homeowners, for instance.

In the narrow definition of tenant security, the resident by law has the right to exclude others from his premises. In other words, he is protected from eviction and he has the privilege not to have others invade the unit. Formally, in all tenure types, the rights are strong. Nonetheless, normal tenants can be evicted for a limited number of reasons, whereas cooperative members and owners cannot. In the case of a cooperative owner, the exact form of the right to exclude depends on the contract agreed between the cooperative and the cooperative owner.

In the case of the broad definition of secure occupancy, besides the rights to exclude, there are also rights to use, change, transfer and earn income. Under that definition, the claim of stronger tenant security rights for cooperative members than for tenants is upheld in a formal sense. These rights (right to use/self-governance, and right to earn a return) generally correspond to the extent of ownership in the equity of the dwelling, although the rights and duties of the cooperative owner depend on the individual contracts. In that case, his rights are not necessarily stronger than those of the cooperative tenant.

### **Sources of market friction and efficiency**

From a legal point of view, the bundles of property rights differ across tenures. As argued above, the questions then will be whether these property rights and the differences between the bundles are clearly defined and whether the property rights are enforceable. Clear definition and enforceability would represent the case without market friction (Kim and Mahoney, 2005). Legally, the rights and the differences between the bundles seem to be relatively clearly defined. However, more work needs to be done on the rights of cooperative owners and owner-occupiers to clarify the exact differences and how they would be revealed in the price paid for owning parts of the housing equity in practice.

*Table 2 Bundles of secure occupancy property rights for cooperative housing compared to renting and owner-occupation*

Property right	Tenant	Cooperative tenant (basic form)	Cooperative owner (with permanent residential right)	Homeowner
Rights to use or consume	Limited	Limited, but stronger (self-governance) than tenant in principle	Yes, but limited rights on land, common facilities etc	Yes
<b>Rights to exclude (narrow definition of secure occupancy)</b>	<b>Strong, but occupant can be evicted for a limited number of reasons</b>	<b>As part-owner, occupant cannot be evicted</b>	<b>As (part-)owner, occupant cannot be evicted other than at end of contract, if the right is not unlimited</b>	<b>Yes</b>
Rights to change form or substance	Limited; duty to undertake maintenance	Limited, but possible with permission of cooperative; duty to undertake maintenance	Yes, but depends on agreement, as does duty to undertake maintenance	Yes
Right to transfer some or all property rights	No	No, only as cooperative with a 75% majority vote	Yes, but can be subject to approval	Yes
Rights to earn income: right to return on investment	No	Limited, in the form of a lower rent (profit distribution)	Yes, in the form of not paying rent, and indirect return in case of sale or reversion (permanent right)	Yes, in the form of not paying rent and indirect return
Rights to earn income: right to public support to dwelling	Indirectly, yes, depreciation allowance in income tax of landlord;  otherwise no, unless special circumstances, low income of households: bricks-and-mortar subsidies	Indirectly, yes, via corporate income tax exemption of cooperative or if not tax exempt via depreciation allowance of cooperative;  yes, special circumstances (see tenant)	Indirectly, yes, via corporate income tax exemption of cooperative or if not tax exempt via depreciation allowance of cooperative;  yes, special circumstances (see tenant)	Indirectly, no

Source: Own elaboration; state of the art in 2012.

Furthermore, even in the absence of hard evidence, it is often said (by members of the management boards of cooperatives in the basic form) that, in practice, most of the members of tenant cooperatives do not recognize the special form of tenure. They perceive their bundle of property rights as the bundle that they think they would have if merely renting. This would imply that residents will be indifferent to the distinction between being a tenant and being a cooperative tenant. Thus, the claim of stronger tenancy rights would not play a role in practice. The residents' perception would also imply that the stronger economic incentive legally associated with tenant cooperative rights will not be exerted, possibly giving rise to market friction and inefficient behavior. Presumably, this will not apply as strongly to cooperative owners, as they have almost the same rights as homeowners (depending on the contract signed). Also their cooperative right will be easier to transfer than that of cooperative tenants, which is usually not tradable on the market.

In neither tenure do the property rights seem to be insecure in the sense of being appropriable by others. Even in renting, they are quite strong. In the cooperative tenure, they are even promoted as a unique selling point – as being legally stronger than the rights for renters. To the best of our knowledge, however, there is no information on what happens in practice.

Formally – thus, in terms of economic efficiency – the universality, excludability and transferability of the rights give residents in the cooperative tenures an advantage over tenants in conventional renting. This conclusion applies the other way around for cooperative owners and homeowners. Again, in practice the question is whether these differences in the strength of rights appear in differences in actual price paid for the different bundles of property rights.

## **Conclusions**

The literature on property rights formed the basis for our investigation of the claim that cooperative members enjoy stronger tenant security than tenants. From a formal legal point of view, this claim was found to be true under the narrow as well as the broad definition of tenant security advanced here. When using the narrow definition of tenant security, whereby the resident has the right to exclude others – in the sense that he is being protected from eviction and has the privilege not to have others invade the unit – the bundles of property rights appear to be clearly different across the tenures. Formally, the tenant's rights are strong. Even so, a renter can be evicted for a limited number of reasons, while cooperative members and owners cannot. In the case of a cooperative owner, the exact formulation of the right to exclude others depends on the particular contract agreed between the cooperative and the cooperative owner.

In the case of the broad definition of secure occupancy – where besides the rights to exclude, also the rights to use, change, transfer and earn income are considered – the claim of stronger tenant security rights for cooperative members is found to be true as well, at least in a formal sense. These rights (right to use/self-governance and right to earn a return on investment) generally go hand in hand with the extent of ownership of (or investment in) the equity of the dwelling. However, the rights of the cooperative owner will depend on the individual contracts. For that reason, these rights are not necessarily stronger than those of the cooperative tenant. But the rights of the cooperative member can be considered stronger than those of the conventional tenant.

In the analysis of market friction and efficiency, the property rights are found to be clearly defined as secure from a legal point of view and they are interpreted to be stronger for cooperative members than for conventional tenants. In practice, however, these rights may be unclearly perceived by the residents, if they believe they have the same rights as if they were renting. It is thus possible that the property rights are not as secure as one might expect in light of the legal framework. Further research

is needed to generate systematic (not just ad hoc) empirical results on how the different bundles of property rights are perceived by the residents and what the price differences are that they are prepared to pay for these differences in secure occupancy.

## References

- BBR (2007a) *Wohnungs- und Immobilienmärkte in Deutschland 2006* [Housing and real estate markets in Germany 2006] (Bonn, BBR).
- BBR (2007b) *Veränderung der Anbieterstruktur im deutschen Wohnungsmarkt und wohnungspolitische Implikationen* [Changes in supply structure and housing political implications] (Bonn, BBR).
- BBR (2011) *Transaktionen kleiner Mietwohnungsbestände* [Transactions of small stocks of rental dwellings] (Berlin, BBR).
- BMVBS/BBR (Eds.) (2007) *Erschließen von Genossenschaftspotenzialen* [Opening up of Potentials of Cooperatives], Forschungen Heft 126 (Bonn, BMVBS/BBR).
- Bundesministerium für Verkehr, Bau- und Wohnungswesen (2004) *Wohnungsgenossenschaften. Potenziale und Perspektiven. Bericht der Expertenkommission Wohnungsgenossenschaften* [Housing cooperatives: potential and perspectives. Report of the Expert Commission on Housing Cooperatives] Abstract (Bonn, BMVBW).
- Bundesministerium für Verkehr, Bau- und Stadtentwicklung (2010) *Aktivierung von Potenzialen genossenschaftlichen Wohnens. Evaluierung der Empfehlungen der Expertenkommission Wohnungsgenossenschaften im Forschungsprogramm "ExWoSt"* [Activation of potentials of cooperative living.] BMVBS-Online-Publikation 25/10, [http://www.bbsr.bund.de/cln\\_032/nn\\_21888/BBSR/DE/Veroeffentlichungen/BMVBS/Online/2010/ON252010.html](http://www.bbsr.bund.de/cln_032/nn_21888/BBSR/DE/Veroeffentlichungen/BMVBS/Online/2010/ON252010.html) (last accessed 12 December 2014).
- Bundesregierung (2001) *Entwurf eines Gesetzes zur Reform des Wohnungsbaurechts* [Concept of law for the reform of the Housing Construction Law] Bundesratsdrucksache 249/01, (30 March) pp. 76-80, <http://dipbt.bundestag.de/doc/brd/2001/D249+01.pdf> (last accessed 12 December 2014).
- Bundesregierung (2006) *Wohngeld- und Mietenbericht 2006* [Housing Allowances and Rents Report 2006] (Berlin, Bundesministerium für Verkehr, Bau- und Wohnungswesen).
- Busch-Geertsema, Volker (2004) The Changing Role of the State in German Housing and Social Policy, *European Journal of Housing Policy* 4(3) pp. 303-321.
- Coase, R.H. (1960) The Problem of Social Cost, *Journal of Law and Economics* 3(October) pp. 1-44.
- Demsetz, H. (1967) Toward a Theory of Property Rights, *American Economic Review, Papers and Proceedings*, 57(May) pp. 347-359.
- Droste, Christiane & Thomas Knorr-Siedow (2007) Social Housing in Germany, in: Whitehead, Christine and Kathleen Scanlon (eds.) *Social Housing in Europe* (London, London School of Economics), pp. 90-104.
- Eggertsson, Thrainn (1990) *Economic Behavior and Institutions* (Cambridge, Cambridge University Press).

- Elsinga, Marja (2005) Affordable and low-risk home ownership, in: Boelhouwer, Peter, John Doling & Marja Elsinga (eds.) (Delft, DUP Science) pp. 75-94.
- GdW Bundesverband deutscher Wohnungsunternehmen (2004a) *Wohnungswirtschaftliche Daten und Trends 2004/2005. Zahlen und Analysen aus der Jahresstatistik des GdW* [Housing - economic data and trends 2004-05: figures and analyses from the GdW annual statistics] (Berlin, GdW) Oktober.
- Flood, Joe (2002) *Secure tenure. Global definition and measurement*, paper presented at the European Network for Housing Research Conference, Vienna, July.
- Furubotn, Eirik & Rudolf Richter (1991) The New Institutional Economics: An Assessment, in E. Furubotn and R. Richter (eds.) *The New Institutional Economics* (College Station, TX, Texas AandM University Press), pp. 1-32
- Furubotn, Eirik & Rudolf Richter (2005) *Institutions and Economic Theory* (Ann Arbor, The University of Michigan Press).
- Haffner, Marietta E.A. & Michael J. Oxley (1999) Housing subsidies: Definitions and comparisons, *Housing Studies*, 14(2) pp. 145-162.
- Haffner, M., J. Hoekstra, M. Oxley & H. van der Heijden (2009) *Bridging the gap between social and market rented housing in six European countries?* (Amsterdam, IOS Press).
- Hall, Robert E. & Dale W. Jorgenson (1967) Tax policy and investment behavior, *The American Economic Review* (57) pp. 391-414.
- Hohfeld, W. (1966) *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (New Haven, Yale University Press).
- Hoyer, N. (2010a) Rendite, Genosse! [Return, cooperative member!] *Wirtschaftswoche* (50; 13 Dec.), pp. 106-109.
- Hoyer, N. (2010b) Gut gespart. Genossen mit hohen Zinsen [Well saved. Cooperative members with high returns] *Wirtschaftswoche* (50) 13 Dec. <http://www.wiwo.de/finanzen/vorsorge/gut-gespart-genossen-mit-hohen-zinsen/5705110.html> (last accessed 12 December 2014).
- Jaffe, Austin J. (1998) Concepts of property, theories of housing and the choice of housing policy, *Netherlands Journal of Housing and Environmental Research*, 4(4) pp. 311-320
- Kim, Jongwook & Joseph T. Mahoney (2005) Property Rights Theory, Transaction Costs Theory, and Agency Theory: An Organizational Economics Approach to Strategic Management, *Managerial and Decision Economics* 26 pp. 223-242.
- Marcuse, Peter (1994) Privatization, Tenure, and Property Rights: Towards Clarity in Concepts. In Danermark, B. and Elander, I. (eds) *Social Rented Housing in Europe - Policy, Tenure and Design* (Delft, The Netherlands, Delft University Press).
- Oxley, Michael & Marietta Haffner (2010) *Housing taxation and the subsidies: international comparisons and the options for reform* (York, Joseph Rowntree Foundation Housing Taskforce), <http://www.jrf.org.uk/publications/housing-taxation-subsidies> (last accessed 12 December 2014).
- Posner, R. A. (1972) *The Economic Analysis of Law*, Boston, Little, Brown and Company.
- Poterba, James M. (1984) Tax subsidies to owner-occupied housing: An asset-market approach, *Quarterly Journal of Economics* (99; Nov) pp. 729-752.

Ruonavaara, Hannu (1993) Types and forms of housing tenure: Towards solving the comparison/translation problem, *Scandinavian Housing and Planning Research* 10, pp. 3-20.

Shroder, Mark (2002) Does housing assistance perversely affect self-sufficiency? A review essay, *Journal of Housing Economics*, 11, pp. 381-417.

UNCH (1999) *Implementing the Habitat Agenda: Adequate Shelter for All, Global Campaign for Secure Tenure* (Nairobi, UNCH).

Williamson, Oliver E. (1998) Transaction cost economics: how it works; where it is headed, *The Economist* 146(1) pp. 23-58.



**OTB – Research for the Built Environment**

Faculty of Architecture and the Built Environment  
Delft University of Technology  
Julianalaan 134, 2628 BL Delft, The Netherlands  
Postbus 5043, 2600 GA Delft, The Netherlands

Phone +31 (0)15 278 30 05

Fax +31 (0)15 278 44 22

E-mail [mailbox@otb.tudelft.nl](mailto:mailbox@otb.tudelft.nl)

[www.otb.tudelft.nl](http://www.otb.tudelft.nl)