# Shared Equity Homeownership

## The Changing Landscape of Resale-Restricted, Owner-Occupied Housing

**John Emmeus Davis**
Research Fellow
National Housing Institute

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Harold Simon
*Executive Director, NHI*

# PREFACE

The most distinctive feature of affordable housing policy in the United States in recent years has been its unrelenting focus on promoting homeownership as a social good, and on increasing the ranks of homeowners among the nation's lower income households. To this end, a variety of strategies have been employed, including capital subsidies, down payment and closing cost assistance, and an ever-increasing array of creative mortgage instruments, offering adjustable rates, lower down payments, longer terms, balloons and other mechanisms that increase immediate access to housing at the price of future risk and uncertainty.

Perhaps as a result of these efforts, although unusually low interest rates and generally low unemployment rates have also played their part, homeownership rates have inched upward. By 2004, 69 percent of American households owned their own home, up from 64 percent in 1985. At the same time, particularly for lower income households and people of color, the downside of this strategy is becoming more and more apparent. Foreclosures are rising in many parts of the nation and, as recent research has shown, a disproportionately large share of lower income homeowners lose their homes, finding themselves back in the rental market a few years later.

While conventional homeownership may be a mixed blessing for many lower income households, the impact of these policies on their neighborhoods remains unclear. While neighborhoods benefit from the presence of stable, long-term homeowners, policies that create more transitory homeownership, while increasing the risk of foreclosures and abandonment, may end up destabilizing neighborhoods, doing them far more harm than good. In other cases, where house prices are rapidly appreciating, publicly subsidized homeownership can lead to windfalls for a few, while other less fortunate lower income households are being pushed out of their own communities.

These risks and uncertainties have brought out clearly the need for alternatives to conventional homeownership strategies. The most important alternatives can be found in what some have called third sector housing. Along with rental and conventional homeownership, this middle ground is represented by shared equity homeownership. Shared equity homeownership ensures that the homes remain affordable to lower income households on a long-term basis by restricting the appreciation that the owner can retain, preserving affordable housing in areas where rising prices are forcing lower income households out of the market. At the same time, by placing the owner within a community-based support system, such as a community land trust or limited equity cooperative, shared equity homeownership can mitigate the risks of homeownership, potentially increasing the benefits of homeownership both for the owner and the neighborhood in which she lives.

While shared equity homeownership makes up only a modest share of all owner-occupied housing in the United States, it is a growing share. Well over a hundred community land trusts exist across the country, from Burlington, Vermont to Santa Fe, New Mexico. Limited equity cooperatives, although predominantly an urban housing type, have become a more widely used vehicle for building stable homeownership and preserving affordability in mobile home parks from New Hampshire to California. With the dramatic growth in inclusionary housing during the past decade, tens of thousands of shared equity condominium units have been created across the country, in settings that range from cities such as Stamford and Boulder to the suburbs of Chicago and New York's Hudson River Valley.

While those involved in creating shared equity homeownership share a commitment to affordable housing, the particular motivations – and the choice of a particular model – vary widely. While many community land trusts see creating permanently affordable housing and building a strong community as a single process, entities pursuing inclusionary housing in hot markets are most concerned with ensuring that the units will remain

affordable, and creating a nucleus of permanently affordable housing in an environment where few lower income households can otherwise afford to live.

The concept of shared equity, restricting the home value appreciation that flows to the homeowner on resale, can be controversial. Some economic fundamentalists object to any limitation on appreciation as an infringement of private property rights, while others see it as hindering the ability of lower-income households to build wealth, a goal that is certainly a legitimate one. These are not frivolous concerns. It is important to remember, however, that these homeownership opportunities were created as a result of public subsidy or other public intervention, as in the case of an inclusionary unit. Sharing the equity is a reasonable quid pro quo, in light of the considerable shelter value that the homebuyer has gained as a result of the public subsidy or intervention, and the public policy value of preserving affordable housing for future generations.

Homeowners in shared equity models do build equity. In most shared equity models, they receive a return keyed to the consumer price index or the increase in household incomes. While this is far less than some homeowners may gain in rapidly appreciating markets, it is a fallacy to assume that rapid house price appreciation is either normal or inevitable. It has only been in the past decade that people have started to assume that appreciation well above increases in consumer prices in general could be counted on, an assumption wildly at odds with longer term historic trends. In the long run, owners of shared equity housing will do well, particularly in light of their modest initial equity stake; moreover, they are far better protected against downturns in the market than conventional homeowners. Such evidence as is available shows that shared equity owners are not locked in to those units, but in fact do move up to the private market, combining such equity as they have with their gains from education, training, and upward workforce mobility.

In the following pages, John Emmeus Davis, one of America's leading authorities on shared equity housing, provides a detailed description of the principal shared equity homeownership models, and the policy and design issues they raise. He addresses the principal claims made for shared equity homeownership as a vehicle for promoting individual wealth, stability and engagement, as well as for building wealth and stability at the community level. Davis also examines the criticisms that have been raised. While recognizing that many issues remain unresolved, Davis clearly establishes the value of shared equity homeownership as a means of providing and maintaining affordable housing and strong neighborhoods.

For over three decades the National Housing Institute has sought and encouraged innovative solutions to the housing crisis in America, a crisis that is affecting increasingly greater numbers of people as wealth inequality grows, wages stagnate and housing costs spiral. We are hopeful that this volume will generate further interest and help promote a national conversation that will lead to a robust third sector housing policy.

Alan Mallach
*Research Director, NHI*

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# I. Overview

## Shared Equity Homeownership in the United States

Shared equity homeownership is planted in the fertile middle ground between arid dichotomies that have historically dominated American housing policy, where residential property is *either* publicly owned or privately owned; where housing prices are *either* socially controlled or market-driven; where residents are *either* renters or owners. The individuals who occupy shared equity housing straddle these boundaries. They possess many of the same "sticks" in a property's bundle of rights that any other homeowner would expect to hold when gaining title to residential property. Unlike their counterparts in market-rate housing, however, the owner-occupants of shared equity housing may not resell their homes for whatever they can get. A limit is placed on the price they may charge and the equity they may pocket when their property changes hands. This limit ensures that homes that are made affordable today because of private charity or public largess will remain affordable tomorrow – for a very long time.

Such resale-restricted, owner-occupied housing has seldom received the scholarly attention or the governmental support long lavished on other forms of affordable housing. But there are signs this may be changing. Shared equity homeownership has been edging closer to the policy mainstream in recent years. Retsinas and Apgar (2005), for example, have urged policymakers to "discard the simple tenant/owner dichotomy," suggesting that the "time has come to rethink rental housing." Hockett et al. (2005: 2), writing on behalf of the Center for Community Change, the Center for Economic and Policy Research, the Center for Economic and Policy Research, the Children's Defense Fund, the Community Learning Project, and the National Low Income Housing Coalition, have proposed a "balanced housing policy," suggesting that the time has come to "redefine home-ownership, so that all kinds of housing options are considered 'homes' and 'ownership' is not just about property deeds and mortgage payments." The National Housing Conference (2005: 12-13), in a policy paper prepared for the Annie E. Casey Foundation, has endorsed the "use of alternative tenure options that fall between rental housing and homeownership" as a means of

"strengthening the ladder for sustainable homeownership." Apgar (2004: 49), in a similar vein, has recommended "creating new and more flexible forms of owner and renter options" as part of a "choice-enhancing housing policy." Acknowledging that numerous examples of these tenure options already exist, he notes with regret that they "struggle to move to scale in a world where so much of the legal and institutional infrastructure focuses on just two options – owning and renting."

Moving to scale has indeed been a struggle for the unconventional models of tenure that make up the landscape of shared equity homeownership, although no one really knows how much of this resale-restricted, owner-occupied housing might actually exist in the United States. There may be as few as a half-million units, predominantly in limited equity housing cooperatives. There may be as many as 800,000 units, with the bulk of them found in deed-restricted houses, townhouses, and condominiums, currently the fastest-growing form of shared equity homeownership. What is known for sure, however, is that the number of nonprofit organizations developing resale-restricted, owner-occupied housing, the number of private lenders financing such housing, and the number of governmental agencies using their dollars and powers to assist such housing have steadily increased in recent years. More and more cities and states now administer homeowner assistance programs, housing trust funds, inclusionary housing programs, or housing incentive programs that require long-term contractual controls over the occupancy, eligibility, and affordability of any owner-occupied housing produced as a result of these public-sector initiatives. In some jurisdictions, most discretionary spending for low-income homeownership is now guided by a formal or informal preference for models of tenure that incorporate such durable controls.

As support for these models has increased, the organizational landscape of resale-restricted, owner-occupied housing has become more diverse, with new models – or new permutations of older models – appearing on a regular basis. Within this changing landscape, three better-established models remain points of reference for all the rest: the limited equity cooperative; the community land trust; and deed-restricted homes with durable covenants regulating their occupancy, eligibility, and affordability. These three classic models of shared equity homeownership are the focus of the present study.

A full understanding of shared equity homeownership requires not only an appreciation for its major models and forms, but also an ability to see the sector as a whole. Especially when it comes to building popular understanding and winning public support for these unconventional models of tenure, the differences among them often matter less than their similarities. As we consider their programmatic components in the pages that follow, therefore, as well as the policies on which they depend and the standards by which they are judged, we shall focus primarily not on what differentiates one model of shared equity homeownership from another, but on what distinguishes all of these models from the subsidized rental housing, the market-priced rental housing, and the market-priced homeownership surrounding them.

## Shared Equity Homeownership: What's in a Name?

The generic name most often given to resale-restricted housing in which the occupants hold an ownership stake is "limited equity housing." It has also been called "non-speculative homeownership," "permanently affordable homeownership," and "third sector housing."[1] In Massachusetts, affordably priced, deed-restricted houses and condominiums created through a variety of state programs are called "Homes for Good" by the nonprofit network that oversees their marketing and resale.[2] In Connecticut, the preferred name was "forever housing," during a period in the 1980s when the state's comprehensive housing policy decreed that all "state-assisted housing should be permanently removed from the speculative market." In Burlington, VT, where durable affordability has been a mainstay of the city's housing policies and programs for over 20 years, deed-restricted condominiums, limited equity cooperatives, and community land trust houses developed with public assistance are collectively known as "perpetually affordable housing."

Our term of choice in the present study is *shared equity homeownership,* although we shall occasionally resort to the longer appellation of "resale-restricted, owner-occupied housing" or refer to "nonmarket models of homeownership." The particular advantage of "shared equity homeownership" is the emphasis that it places on three distinguishing features: the owner-occupancy of residential property; the fair allocation of equity between one generation of lower-income homeowners and another; and the sharing of rights, responsibilities, and benefits of residential property between individual homeowners and another party representing the interests of a larger community.

The people who occupy the housing provided through these alternative models of tenure are homeowners, not tenants. They make an investment in their housing which, under most circumstances, is returned to them when they leave. They often depart with a nest egg much larger than the one they brought to the deal when first buying their housing. This ownership stake is evidenced by possession of a real estate deed or corporate shares that are transferable from one owner-occupant to another and inheritable from one generation to another. Equally important, the occupants of these homes are placed beyond the pale of tenancy by the security they enjoy, the control they exercise, and the responsibilities (and risks) they assume in occupying and operating the housing that is theirs. Not incidentally, these models tend to be legislated, regulated, financed, and taxed by state and local governments in ways that clearly differentiate them from housing that is renter-occupied.

These alternative models of homeownership (and the term we have chosen to describe them) place an emphasis on the fair allocation of equity, focusing specifically on how the appreciating value of residential property is regularly created and to whom it rightfully belongs. Equity is a product, in part, of a homeowner's personal investment in buying and improving a property over time. Most owners of a shared equity home will be able to recoup that investment when they resell their homes, along with some growth in equity. They are not allowed to walk away, however, with all of the value embedded in their property. Much of it – often the bulk of it – is retained in the property itself, producing a relatively affordable purchase price for the next homebuyer of modest means. Withheld from the grasp of the departing homeowner is the community's investment: equity created at the time of initial purchase if a public grant, charitable donation, or mandated concession from a private developer was used to subsidize the property's purchase price; and equity created during the course of the homeowner's tenure if public investments in infrastructure, private improvements in surrounding properties, or changes in the political economy of a city, region, or state have increased the property's appraised value. In market-rate housing, the entirety of such socially created equity belongs to the homeowner. In shared equity housing, it does not.

The third distinguishing feature of these alternative models of tenure is the emphasis they place on what is shared between individual homeowners and a larger community. Equity is certainly a part of it, since all of these models attempt to balance a fair return for those who are selling their homes against fair access for those who are buying them, in effect sharing the unencumbered value of residential property among successive generations of lower-income homeowners. But equity is not all that is shared. In all of these models, various "sticks" in the bundle of rights are allocated among multiple parties. Someone other than the individual homeowner exercises significant control over how the property may be used, improved, financed, and conveyed. While most obvious in cooperative housing, where all real estate assets are held in common and a board of directors collectively determines the cooperative's management, the sharing of ownership and control between the individual homeowner and some external administrative entity is to be found in every model of resale-restricted, owner-occupied housing. In market-rate housing, the rights and responsibilities of homeownership belong to the homeowner alone. In shared equity housing, they do not.

Because the rights and responsibilities of homeownership are shared, so are the benefits. Some of these benefits accrue to the individuals who own and occupy residential property; others accrue to the surrounding community – or to society as a whole. The signature achievement of shared equity housing lies in its ability to ensure

that these benefits do not bump too harshly against each other, promoting instead an equitable and sustainable balance between them. The literature of limited equity cooperatives, community land trusts, and other forms of shared equity homeownership is replete with descriptions of this delicate balancing act. One of the best is to be found in *The Community Land Trust Handbook* (Institute for Community Economics, 1982). The opening chapter has this to say about "balancing individual and community interests" in the ownership and use of residential real estate:

> What one individual does to secure his or her interests may interfere with the interests of other individuals or the community. And what the community does to secure its interests may interfere with the interests of individuals. A satisfactory property arrangement must not advance the interests of one individual or group at the expense of another. Any effectively balanced arrangement requires that there be agreement not only on what the legitimate interests are but on how they are limited by each other.

Market-rate housing tilts heavily toward the individual, directing most of the benefits of residential property toward those who are fortunate enough to own it. Shared equity housing is designed to correct this imbalance, bringing the interests of individuals into closer alignment with the interests of community. In shared equity housing, the benefits derived from owning, using, improving, and conveying residential property are pursued in relation to one another. Every benefit realized by an individual homeowner is "effectively balanced" by a corresponding benefit realized by the larger community. Neither is pursued totally in isolation from the other. Neither is secured totally at the expense of the other. Expanding affordability for the present generation of lower-income homebuyers, for example, is balanced against preserving affordability for future generations of lower-income homebuyers. Creating private wealth is balanced against retaining public wealth. Enabling mobility for individuals who own a shared equity home is balanced against improving conditions for all who inhabit a particular locale.

A generic name that places such emphasis on the owner-occupancy of residential property, the fair allocation of equity, and the sharing of rights, responsibilities, and benefits has obvious advantages. A major disadvantage of calling these models "shared equity homeownership," however, is the lack of mention of a final feature that clearly distinguishes these nonmarket models of housing from their market-rate counterparts. The protection of owner-occupancy, the intergenerational allocation of equity, and the balance of interests embodied in these models are designed to last a very long time. "Forever" is the gold standard here, with most proponents and practitioners of shared equity housing willing to settle for nothing less than contractual controls over the use and resale of residential property that ensure the permanent affordability of owner-occupied housing.

For purposes of the present study, however, both in defining shared equity homeownership and in totaling the units contained in this sector, we have opted for something less than forever. We have selected a 30-year standard as our rule of thumb in deciding what to count as "shared equity homeownership." Contractual controls over the use and resale of such housing should last a minimum of 30 years. Forever is better, because even after 30 years of shared ownership the prerogatives of private property can rapidly overwhelm the hard-won balance between individual interests and community interests when social controls are lifted. The result, in many markets, is that housing affordability will be quickly lost, neighborhood stability will be gradually eroded, and any subsidies invested in making these decontrolled homes affordable will be eventually removed, benefiting a few at the expense of the many. Nevertheless, ensuring 30 years (or more) of continuous affordability by closely regulating the use and resale of privately owned residential property should be treated as a significant departure from market-rate homeownership. Any "balanced arrangement" that endures so long, likely spanning more than one generation of homeowners across multiple resales, is worth including in the company of more durable forms of shared equity homeownership. We shall retain a decided preference for contractual controls that last forever, but leave open the door to forms of tenure that secure

affordability for "only" 30 years. Longevity, rather than permanency, in other words, will be the standard used in the present study in deciding what is – and is not – "shared equity homeownership."[3]

Three models of tenure come the closest to matching the distinguishing characteristics of shared equity homeownership: the limited equity cooperative (LEC); the community land trust (CLT); and deed-restricted houses, townhouses, and condominiums with resale controls lasting a minimum of 30 years. The housing is owner-occupied. The equity that homeowners may pocket when reselling their ownership stake is limited. The rights, responsibilities, and benefits of residential property are equitably shared between individual homeowners and a larger community. Affordability is contractually maintained for many years.

To focus on these three representative models of resale-restricted, owner-occupied housing is to exclude other forms of market and nonmarket housing that fit less comfortably into our working definition of "shared equity homeownership." Thus the emphasis on owner-occupancy leaves out every form of rental housing, regardless of whether the property's owner is a for-profit landlord, a nonprofit organization, or a public housing authority. More problematically, homeownership also nudges aside the mutual housing association (MHA), an innovative model of resident-controlled housing that bears more than a passing resemblance to the three models selected for the present study. Most MHAs have rights of occupancy, limitations on equity, and a balance of benefits very similar to those provided by LECs, CLTs, and deed-restricted homes. Significantly, the occupants of many MHAs tend to think of themselves more as homeowners, than as tenants. Nevertheless, most MHAs are structured, operated, regulated, financed, and taxed as rental housing. Legally, the rights and responsibilities of their occupants are more characteristic of tenancy than of homeownership. The MHA is not included among the three models of shared equity homeownership featured here, therefore, although there is a fine line between the LEC and residential communities that are organized as a zero equity cooperative or a mutual housing association.

Excluded, as well, are forms of homeownership that make no provision – or only temporary provision – for limiting equity and maintaining affordability. This distinguishing characteristic clearly places single-family, fee-simple, market-rate homeownership outside our working definition of shared equity homeownership. It does the same for various forms of common-interest housing like market-rate condominiums and market-rate cooperatives, where many rights and responsibilities are shared, but equity is not. The departing homeowner claims it all. There are nearly always restrictions in these common-interest communities on the uses to which a homeowner's property may be put. There may also be restrictions on a unit's conveyance, where a cooperative's board or a condominium association, for example, has the right to approve prospective buyers. Affordability is not a factor in setting the conditions for a unit's sale, however. There are no restrictions on the seller's equity or the unit's price.

This is also the case under various "shared ownership" or "shared appreciation" schemes for financing owner-occupied housing. In one version, a private investor or a public agency pays part of the purchase price of an owner-occupied home and then receives at resale the equity originally invested, plus a percentage of the property's appreciation.[4] In another version, a private investor or a public agency provides a low-interest, no-interest, or deferred-interest loan, helping a low-income household to purchase a high-cost home that would not have been affordable otherwise. At resale, the home is resold at its highest market value and the lender is repaid the principal, any outstanding interest, and a percentage of any appreciation accruing to the home between its initial purchase and eventual resale. In both of these financial arrangements, the equity is "shared," but the beneficiaries are the homeowner and the investor. There are no restrictions on the property's resale price. No attempt is made to maintain its affordability for the next generation of homebuyers.[5] There may be some benefit to the surrounding community, if the property is located in a dilapidated neighborhood where any increase in homeownership is welcomed, but all other benefits from these financial schemes accrue to individuals, not to the community. There is none of the balance that is found

in limited equity cooperatives, community land trusts, and deed-restricted houses, townhouses, and condominiums. There is no intergenerational allocation of equity. There is no long-term preservation of affordability. Shared equity financing and shared equity homeownership are worlds apart.

## Shared Equity Homeownership: What's the Rationale?

The growing support for models of tenure that bring to their occupants more rights than are typically offered in rental housing and more restrictions than are typically imposed in homeowner housing has no single explanation. There are, in fact, ten different explanations scattered among the publications, pronouncements, and policies of the public officials who are supporting shared equity homeownership, the private lenders who are financing it, and the community activists who are promoting it. These claims for the effectiveness and worth of limited equity cooperatives, community land trusts, and deed-restricted, owner-occupied housing provide a wide-ranging rationale for shared equity homeownership. They also provide an implicit critique of other forms of affordable housing provision more commonly supported by the market and the state, since shared equity homeownership is claimed to do what conventional tenures cannot.

### AFFORDABILITY

The current housing crisis in the United States is often described as an "affordability crisis." There is a growing gap between what people can pay for housing, given what they earn, and what they must pay for housing, given what it costs. As always, the lowest-income households are hit the hardest. Over the past 25 years, the inflation-adjusted incomes of households in the bottom two quintiles have remained nearly flat, while rents and home prices have outpaced the general rate of inflation (JCHS, 2003: 25). A widening affordability gap has left millions of low-income people with precarious housing, inadequate housing, or no housing at all, and has dampened whatever hope they may once have had of someday owning a home. In many communities, it is not only the poor who are being priced out of the homeownership market but average wage earners as well, including such "key workers" as nurses, schoolteachers, firefighters, and police officers. For them too, homeownership is becoming an elusive dream.[6]

Shared equity homeownership, according to supporters of the various models that constitute this particular segment of the third sector housing continuum, is capable of turning this dream into a reality. By reducing the initial cost of buying a home and the monthly cost of operating it, these nonmarket models create affordability. They enable persons of modest means to gain access to benefits that most rental housing in the United States does not provide, including security of tenure, greater control over costs and improvements, the opportunity for asset accumulation, a legacy for one's heirs, and access to a host of homestead exemptions, tax deductions, and credit enhancements that tend to be reserved in the United States for homeowners alone. At the same time, these models are claimed to preserve affordability over many years. By limiting the resale price of owner-occupied property, these models enable the next generation of lower-income homebuyers to gain access to the same property-based prerogatives and privileges that have been made available to the present generation.

In short, the affordability promised by shared equity housing has two dimensions, where benefits accruing to first-time homeowners in the present are balanced against benefits accruing to a wider community of prospective homebuyers in the future. These claims can be summarized as follows:

*Expanding access to homeownership.* Shared equity housing helps low- and moderate-income people to become homeowners, especially in communities where market-rate homeownership has become elusive not only for low-income households but also for "key workers" earning a modest wage.

*Preserving access to homeownership.* Shared equity housing is a way to maintain affordability over time. Especially in communities where the investment of public dollars or the application of public powers has expanded homeownership for persons excluded from the market, these models are capable of ensuring that the next generation of low- and moderate-income homebuyers will have

access to the same opportunities being made available to the present generation.

## STABILITY

Although homeownership can be a dream come true for low-income people who have been renters all their lives, it may also be a precarious reality. Too many first-time homeowners, especially those of limited income, fragile health, or physical or mental disability, eventually find they cannot bear the burden of owning a home – at least not by themselves. Too many of them eventually fail in maintaining and retaining the homes that were theirs, with disastrous results not only for those who fall back into renting, but for the surrounding community as well. As Apgar (2004: 46) has noted:

> Unable to properly assess the real risks and responsibilities of homeownership, many low-income and low-wealth families become homeowners even if this choice is a risky and potentially costly mistake. When families take on debt that they are unable to repay, homeownership does not build wealth. Rather, it diverts scarce resources away from meeting other pressing needs. In the worst case scenario, overextended homeowners may face a financially devastating foreclosure that undermines their ability to gain access to credit and capital for years to come. And, when concentrated in low-income and low-wealth communities, foreclosures can serve to destabilize already distressed communities and undo decades of community revitalization efforts.

When the burdens of homeownership are shared, however – when lower-income households or persons with disabilities are not forced to bear individually the costs and risks of owning a home – fewer should fail. That is part of the promise of shared equity homeownership, in most of its forms.[7] Newly minted homeowners are not required to "go it alone." Instead, residential security is "backstopped" through a system of mutual aid in which responsibilities are shared, costs are pooled, and separate households are linked together in common cause. Long after a home is purchased, a sponsoring municipal, nonprofit, or cooperative organization remains in the picture, providing guidance and support in good times; preventing deterioration, default, and displacement in bad times. A continuing commitment to helping low-income people gain access to homeownership is matched by a continuing commitment to helping first-time homeowners succeed.

Stabilizing the housing situations of individual households can also have a stabilizing effect on the surrounding neighborhood. In neighborhoods where disinvestment has resulted in acres of dilapidated residential buildings, shared equity housing can not only backstop hard-won homeownership gains but initiate the development of new owner-occupied housing, creating islands of amenity in a sea of decay. In neighborhoods where reinvestment in residential real estate has resulted in speculative buying and soaring prices, threatening low-income residents with displacement, shared equity homeownership can insulate a portion of a neighborhood's housing against the vagaries and depredations of the market, creating "bulwarks against gentrification."[8]

The stability promised by shared equity housing has two dimensions, therefore, with benefits accruing not only to lower-income homeowners but also to the residential communities in which they live. These complementary claims can be summarized as follows:

*Enhancing security of tenure.* Shared equity housing helps first-time homeowners succeed. In most of these nonmarket models, there is a sharing of risks and responsibilities, along with a readiness to intervene in times of trouble. These security enhancements backstop the homeownership opportunities that a public agency or nonprofit sponsor has worked so hard and spent so much to create.

*Stabilizing residential neighborhoods.* Shared equity housing is a means of stabilizing property values, protecting owner-occupancy, and preventing the displacement of lower-income households in neighborhoods experiencing speculative reinvestment and gentrification. Especially where governmental action has been the instigator of neighborhood change – upgrading facilities, services, or infrastructure, for example, or increasing allowable density – these models can insulate a portion of a neighborhood's

residential property against both the negative externalities of public investment and the disruptive fluctuations of private investment.

## WEALTH

Owning a home is not only a source of stability, but a source of wealth. It builds savings for households not inclined (or able) to put money aside for the future. It creates opportunities for capital gains, when real estate markets are rising. It assembles "transformative assets" that one generation can pass along to another, "lifting a family beyond their own achievements" (Shapiro, 2004: 10).

These prospects for asset accumulation have helped to push homeownership toward the top of the domestic policy agenda. Increasing the rate of homeownership, especially among low-wealth minorities, has been promoted by liberals and conservatives alike as a silver bullet strategy for social advancement: a way of lifting low-income families out of poverty, while reducing historic inequalities between whites and blacks. "We need policies," say Oliver and Shapiro (1997: 9), "that directly promote asset opportunities for those at the bottom of the social structure, both black and white."[9] The number-one "asset opportunity" in the minds of many community activists, public officials, and program officers for private foundations is homeownership. As George McCarthy at the Ford Foundation has put it:

> We've decided to focus on homeownership as a means of building assets. Homeownership is the main means by which people have been able to gain wealth and it's the most viable option for housing low-income people, because the rental market doesn't work and is pushing them out. The challenge is how to make homeownership available for the lowest-income families. (Quoted in Pitcoff, 2003: 12)

Shared equity housing has ridden the coattails of this surge in funding for low-income homeownership. Given the opportunity, these nonmarket models usually prove to be much more successful than their market-rate counterparts in meeting the challenge of making homeownership available for families of modest means. The larger claim of their supporters, however, is that shared equity homeownership gives low-income families access not only to property but also to wealth. Despite the limits that are placed on a property's resale, which usually limits the homeowner's equity as well, most families who purchase a shared equity home will realize a growth in personal assets during their time in shared equity housing. They will get back their downpayment – or, in the case of cooperative housing, the initial price of their shares – when they resell. They will get back the forced savings they have accumulated in making monthly payments on a mortgage or share loan. They may be able to accumulate voluntary savings, as well, a consequence of stabilizing their housing costs. They may be able to recover some (or all) of what they have spent in making major improvements. They may be able to resell their ownership interest for more than its initial price, realizing significant capital gains.[10] In short, they will tend to walk away with more wealth than they would have accumulated had they remained renters.

But not as much wealth as they *might* have possessed had they been able to purchase a market-rate home. The reality, of course, is that most families buying shared equity homes would never have become homeowners had they waited until they could eventually afford a market-rate home. And when low-income families do manage to buy a market-rate home, the amount of wealth they derive from owning such property is often quite small. There may be very little market appreciation, since the "houses affordable to low-income buyers are often older, in need of costly repairs, and located in depressed, crime-ridden neighborhoods with few jobs" (Pitcoff, 2003: 10). Regardless of whether their homes increase in value, moreover, low-income homeowners can only extract wealth from their homes if they are able to hang onto them for many years, weathering the storms of unexpected repairs, fluctuating incomes or, lately, budget-busting payments on an adjustable rate mortgage.[11] And they can only accumulate significant assets if they are able to trade up to bigger and better housing over time. Too often, they do neither. Reid (2005), for instance, discovered that only

47% of the first-time, low-income homebuyers in her study still remained homeowners five years after buying a market-rate home. Similarly, Boehm and Schlottmann (2004: 33) in a national study of "wealth accumulation and homeownership," prepared for the U.S. Department of Housing and Urban Development, discovered:

> …a high likelihood that lower income families will slip back to renting after attaining homeownership. For minority households this probability is quite high. In addition, the progression beyond first-time homeownership is quite limited for lower income households. Indeed, for minority households, first-time homeownership is effectively the only step observed in the housing hierarchy (that is, they don't trade up as much as non-minorities).

Concluding nevertheless that "current initiatives to increase low-income homeownership seem both desirable and valid," Boehm and Schlottmann suggest that policies focusing on expanding homeownership for lower-income households should be supplemented by "policies designed to ensure that once households achieve homeownership, they remain homeowners (rather than reverting to rental tenure)." Shared equity homeownership, as we have already noted (although Boehm and Schlottmann do not), provides precisely this sort of security enhancement, backstopping the success of first-time homebuyers of modest means.

Two other realities shed a favorable light on the relatively modest gains that are realized by the owners of shared equity housing. The first reality is that even small amounts of wealth may have a "transformative" effect on the lives of low-income people. Programs promoting asset formation for the poor, such as micro-enterprise lending, individual development accounts (IDAs), education and youth asset accounts, and self-employment asset trusts, have demonstrated that even a nest egg of $2,500 can significantly improve the conditions and prospects of a lower-income family.[12] If this is true, then the gains that are realized by the owner-occupants of shared equity housing, which tend to exceed by a considerable amount those accumulated through IDAs and the like, should have a similar (or greater) transformative effect.

The second reality is that much of the growth in personal wealth that low-income and moderate-income households realize when reselling market-rate homes is frequently derived from public subsidies that were provided to help them in purchasing property otherwise beyond their means. As long as the public's per-unit investment remained relatively small, there was little inclination on the part of most governmental officials to protect this investment. Homeowners were permitted to pocket not only the wealth created by their own investment but the wealth contributed by the larger community. As the size of the subsidy required to boost a lower-income household into homeownership has grown ever larger, however – now exceeding $100,000 per unit in some communities – it has become harder to justify the loss of these public subsidies – and the loss of affordability these subsidies have bought.[13]

Shared equity homeownership, in many jurisdictions, has become the fiscally conservative method of choice for protecting the public's sizable investment in affordable housing. Because the resale price of every home is capped, public subsidies are not removed by homeowners when they resell their assisted property. Nor are these subsidies recaptured by a public agency at resale and recycled through another round of loans to low-income buyers of market-rate homes, a common practice of many cities and states that usually results in the depletion of their subsidy pool over time. In shared equity homeownership, by contrast, these subsidies are retained in the housing itself. The value of the public's investment is neither diminished nor lost.

The wealth that is promised by shared equity housing has two dimensions, therefore, where the accumulation of assets by individuals is balanced against the stewardship of assets provided by the community. These claims have become a potent part of the public and private rationale for shared equity homeownership.

*Creating personal wealth.* Shared equity housing helps build assets for lower-income homeowners. Despite the limit that is placed on an owner's proceeds when a

shared equity home is resold, these models provide an opportunity (although not a guarantee) for homeowners to walk away with more money than they brought with them when buying into this housing.

*Preserving community wealth.* Shared equity housing prevents the privatization and removal of public subsidies. Especially in cases where a valuable donation of public lands or a sizable investment of public dollars has been necessary to bring the purchase price of a house, condominium, or cooperative apartment within the financial reach of a lower-income household, nonmarket models of tenure become a means of ensuring that precious public resources are preserved for the continuing benefit of a larger community.

## INVOLVEMENT

Another explanation for the growing interest in shared equity homeownership is rooted in the relationship presumed to exist between the tenure of a neighborhood's residential property and the social participation of a neighborhood's residents. A large body of empirical evidence shows that homeowners are more likely than renters to participate in voluntary organizations and to engage in local political activity.[14] There is also a body of evidence suggesting that neighborhoods with denser social networks (often called "social capital") and with higher levels of civic engagement are more likely to have lower rates of instability, unemployment, crime, and other social ills.[15] Latching onto these findings, many public officials and community activists have come to embrace homeownership as something of an all-purpose antidote to "bowling alone,"[16] a vehicle for increasing citizen involvement in low-income communities, which seem to need it the most.

Limited equity cooperatives, community land trusts, and deed-restricted housing are credited with making the same contributions to social participation as any other form of homeownership. They are also said to provide something extra, especially when applied to distressed multiunit housing where poor management by a project's previous owners has created unsafe and unsanitary living conditions.[17] Shared equity homeownership, according to its supporters, is a fertile incubator of social capital. Residents work together to maintain and to improve their shared equity homes. They participate in governing whatever organization is charged with responsibility for safeguarding the security, amenity, and affordability of their homes. Energized and empowered by these experiences, they are also more likely to look outwards, involving themselves in block clubs, watch groups, and similar civic associations of the society that surrounds them.[18]

There are two dimensions to the involvement that is promised by shared equity homeownership, therefore, where the social capital accumulated within a limited equity cooperative, a community land trust, or deed-restricted housing becomes the basis for wider involvement in the surrounding community. These claims can be summarized as follows:

*Building social capital.* Shared equity homeownership is a means of nurturing social networks and mutual interests among persons who reside within the same residential community. Especially in low-income housing projects with a troubled history of deferred maintenance, criminality, and general distress, shared ownership can build collective responsibility and spur collective action, improving conditions for all residents.

*Expanding civic engagement.* Shared equity housing is a springboard to wider involvement in the politics, voluntary organizations, and civic associations of the community surrounding one's personal living space.

## IMPROVEMENT

Shared equity housing is also claimed to be a platform for personal mobility, providing low-income people with stability, confidence, resources, and skills that enable them to better their lives and the lives of their children. It is not only those who stay in shared equity housing whose lives improve, moreover, but those who leave. The owners of shared equity housing are claimed to be just as mobile as other homeowners in a country where changes in residence are common. They can resell their shared equity homes with relative ease and obtain housing that is comparable to the housing they leave behind. They may even step up to better housing or move to a more affluent neighborhood, when their time in shared housing has come to an end.

The lives of these homeowners are changed for the better, it should be noted, despite the contractual limit that is placed on the amount of wealth they can accumulate from owning and reselling a shared equity home. What LECs, CLTs, and deed-restricted housing clearly demonstrate, according to their supporters, is that most of the transformative effects that are widely attributed to homeownership have little to do with the magnitude of a homeowner's equity. What transforms a family's life the most, when moving from renting to owning, is the right to stay put (security), the right to use and improve one's living space free of the dictates of another (control), and access to a variety of social advantages (status), financial advantages (taxes, credit, and collateral), and locational advantages (better schools, better services, better access to jobs, etc.) that are bestowed more abundantly on those who own than on those who rent. These are property-based benefits that are as likely to accrue to the owners of resale-restricted homes as to the owners of market-rate homes.

Shared equity housing is also claimed to be a means for community improvement, a vehicle for rebuilding neighborhoods in which the poor have been concentrated or for diversifying neighborhoods from which the poor have been excluded. These alternative models of tenure are promoted and supported, in the first instance, as one feature of a broader community development strategy, a way of linking the construction (or rehabilitation) of affordable housing to the revitalization of the area surrounding it. They are promoted and supported, in the second instance, as one feature of a regional "fair share" strategy, a way of opening up suburban enclaves to people with lower incomes and darker skins than a majority of the families who have settled there heretofore.

The improvement that is promised by shared equity homeownership has two dimensions, therefore, where personal betterment and community betterment go hand in hand. These claims can be summarized as follows:

*Enabling personal mobility.* Shared equity housing increases individual well-being, helping lower-income households to better themselves. These models not only put more money into the pockets of the poor. They also give individual homeowners the stability, confidence, and resources to seek out better jobs, to step up to better housing, or to move out to better neighborhoods.

*Promoting development and diversity.* Nonmarket models of homeownership are a means for improving neighborhoods in which the poor have been heavily concentrated or for diversifying neighborhoods from which the poor have been historically excluded.

## Mapping the Landscape of Shared Equity Homeownership

Does the performance of deed-restricted housing, CLTs, and LECs measure up to the lofty claims that are made for them? Does shared equity homeownership actually do what it promises to do? The evidence, as we shall see, is rather mixed. There is considerable support for some of these claims, while the evidence for others is inconclusive, incomplete – or nonexistent. Even when the evidence is compelling that a particular model of shared equity housing has delivered the goods, it is often difficult to say why it was effective or whether, under different conditions, it might perform as well.

That is not to say that some of these claims are false. It is to admit that too little is known about too many aspects of shared equity homeownership to declare with confidence that all of its claims are true. Our knowledge is limited, in part, because most housing research in the United States has focused on a few dominant forms of tenure. Deed-restricted housing, community land trusts, and limited equity cooperatives have received relatively little academic attention compared to market-rate homeownership, for-profit rentals, nonprofit rentals, and even publicly owned rental housing. Our knowledge is limited, too, by an organizational landscape that is still evolving. The rights and responsibilities of shared equity housing are allocated in many different ways. The contractual controls regulating the use and resale of shared equity housing are designed in many different ways. The organizations overseeing these long-term controls are structured in many different ways. The malleability of these models is an important part of their appeal, since they are easily tailored to fit a community's changing conditions, priorities, or needs, but so many variations makes for a very messy picture when a researcher is trying to compare the per-

formance of shared equity housing to more familiar forms of tenure – or, for that matter, trying to compare the performance of one nonmarket model to another.

Acknowledging both the complexity of this organizational landscape and the paucity of relevant research, the National Housing Institute decided to begin its investigation of shared equity homeownership with a general assessment of what is known – and not known – about these unconventional forms of tenure. The goal of the present study is not to provide definitive answers to the many questions surrounding whether shared equity housing actually delivers (and balances) its promised benefits, but to provide a framework within which these questions may be defined more precisely and examined more systematically. The focus is on mapping unfamiliar terrain:

- Documenting the characteristics, history, and prevalence of the three models of shared equity homeownership that are presently predominant in the United States (Chapter Two).
- Describing the programmatic options that go into designing the durable, contractual controls that lie at the heart of every model of shared equity homeownership (Chapter Three).
- Identifying the policies of cities and states that support or impede the possibility of moving these models to scale (Chapter Four).
- Weighing the evidence for and against the claims that are commonly made for the effectiveness and worth of deed-restricted housing, CLTs, and LECs (Chapter Five).

Viewing these models from multiple angles allows us to appreciate not only their variety, but their similarity. The boundaries between them begin to blur, forcing us to see the sector as a whole; forcing us to devote as much attention to the design, policy, and performance of *shared equity homeownership* as we normally devote to the separate models making up this sector. A multifaceted perspective also allows us to apprehend not only what is present in our emerging picture of shared equity homeownership, but what is missing. Some features are drawn with precision and detail; others are sketched with the faintest of lines, awaiting the pigments of future research. The present study is merely a start. There is still a lot of the landscape that is left to paint.

# II. Models

## The Organizational Landscape of Shared Equity Homeownership

*The landscape of shared equity homeownership is both varied and variable, with new hybrids appearing every year, but three basic models may serve as points of reference for all the rest: deed-restricted homes, community land trusts, and limited equity cooperatives. The structure and prevalence of these models are reviewed in the present chapter, accompanied by case profiles of representative organizations that have succeeded in making shared equity homeownership a reality.*

The organizational landscape of shared equity homeownership is constantly changing. There are many ways to allocate the rights, responsibilities, and benefits of resale-restricted, owner-occupied housing. There are many ways to tailor the durable controls that regulate the use and resale of such housing. There are many ways to structure the administrative entity charged with monitoring and enforcing these controls over time. Developers of shared equity housing dip into this pool of possibilities on a regular basis to craft combinations that are capable of meeting the shifting demands of the public officials who subsidize such housing, the private lenders who finance it, the households who buy it, and the organizations and communities who sponsor it. The result is a landscape of unusual diversity, with new models of shared equity homeownership – or, perhaps more accurately, new permutations of older models – appearing nearly every year.

Despite this organizational ferment, several models of shared equity homeownership may serve as points of reference for all the rest. Our focus shall be on deed-restricted homes (houses, townhouses, and condominiums) with resale controls lasting a minimum of 30 years, community land trusts, and limited equity cooperatives – three models that come the closest to matching the defining characteristics of shared equity homeownership that were described in the previous chapter. We shall examine each of these models in turn, reviewing their distinguishing features, their organizational variations, and their history and prevalence, both inside and outside of the United States. Included as well are brief profiles of nine organizations that have applied these alternative models of homeownership with notable success.

### Deed-Restricted Homes

The "deed-restricted home" encompasses a range of types and tenures of housing, including detached houses, attached duplexes, row houses, townhouses, and condominiums. All of this housing is owner-occupied. All of it is continuously affordable: sold and resold for prices that remain within the financial reach of the targeted class of low- or moderate-income homebuyers. Affordability is

achieved through a restrictive covenant appended to a property's deed or, in some cases, to a property's mortgage. These covenants may last forever or may lapse after a specified period of time. For purposes of the present study, affordability must last at least 30 years for a deed-restricted home to be counted among the ranks of shared equity homeownership.

## AN ALTERNATIVE FORM OF HOMEOWNERSHIP

The occupants of deed-restricted homes have an ownership interest in residential real estate, evidenced and secured by their possession of a deed for the housing in which they live. The title to both the land and the building may be held separately and exclusively by individual homeowners. Alternatively, part of this ownership interest may be held in common by many homeowners. In a multiunit condominium project, for example, each homeowner holds a "unit deed" to his or her living space. The unit deed is evidence of an exclusive, individual interest in the dwelling's interior space, including the surface treatments of walls, floors, and ceilings – an ownership interest that has sometimes been described, somewhat derogatorily, as a "box of air." The structural elements lying just beneath, below, or above these interior surfaces are not individually owned, however, nor are the exterior hallways, systems, sidewalks, or lands that surround and support individual apartments. They are jointly owned by all who individually own the project's units. They are common property.

The owner-occupants of deed-restricted housing possess most of the "sticks" in the bundle of rights that any other homeowner would expect to hold in the United States, but not all of them. Some are shared with an outside party who owns or controls several "sticks" that, in market-rate housing, belong to the homeowner alone. The owners of deed-restricted housing have exclusive use of their property, but they are prevented from using it for anything other than their primary residence. They have the right to resell their property, but they are constrained from conveying it to whomever they wish or for whatever price the market will bear. They may improve their property, mortgage their property, or bequeath their property, but there are usually contractual constraints on these ownership rights as well.

The mechanism through which these contractual constraints are typically imposed is an affordability covenant appended to the homeowner's deed, regardless of whether the property in question is a detached house, an attached townhouse, or a condominium in a multiunit project. This covenant imposes on the owner-occupant an obligation to use the property primarily for residential purposes and to occupy the property as his or her primary residence.[19] It requires the owner-occupant to resell the property to someone from a specified pool of income-eligible buyers for a specified, formula-determined price. The covenant may also contain a preemptive option, giving a nonprofit corporation, a public agency, or some other party the first right to repurchase the homeowner's property at the formula-determined price. All these requirements run with the deed, binding both the present owner and any subsequent owners of the encumbered property.[20]

The outside party that initially imposes these contractual constraints on the owners of a deed-restricted home may assume responsibility, as well, for continuously monitoring and enforcing them. Alternatively, monitoring and enforcement may be assigned to a completely different party. It is increasingly common, for example, for a public agency that has subsidized shared equity housing and that has mandated long-term affordability to assign administrative responsibility for the covenant's enforcement to another entity, such as a nonprofit organization.

**PROFILE**

A Regional Coalition for Housing (ARCH), Washington

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Unfortunately, it is also common for public funders or private sponsors of homes encumbered with affordability covenants to deem such encumbrances to be "self-enforcing." Their belief is that durable covenants running with a deed can ensure lasting affordability without any need for administrative oversight. When a current owner-occupant attempts to resell his or her property in violation of the covenant contained in the deed, so the argument goes, the

buyer's lender, the buyer's lawyer, or any company asked to issue title insurance will block the sale, because there is a cloud on the title. These outside agents will function, in effect, as the ultimate enforcers of covenants designed to ensure long-term affordability.

The confidence put in self-enforcement, however, has usually proven in practice to be woefully misplaced. With enough money on the table, interested sellers and interested buyers tend to find ingenious ways to circumvent the scrutiny of the disinterested parties presumed to enforce affordability at the time of resale. "Self-enforcing" deed restrictions have also failed, in some states, simply because state law either limits the duration of such affordability covenants or requires a party with a direct and continuing interest in the property (and its covenant) to assert that interest publicly and periodically – or the covenant becomes unenforceable.

Note, too, that violations of a covenant's *use* restrictions are likely to be ignored altogether, when a covenant's enforcement depends entirely on an outside party intervening at the moment of sale. As Abromowitz and White (2006: 9) have pointed out:

> Although price and eligibility restrictions may be self-enforcing to a degree, occupancy and use restrictions are not self-enforcing at all. Unless these restrictions are monitored and enforced by some authorized agency, there is nothing to prevent the owner of an affordable home from moving out and becoming an absentee landlord, or allowing the public investment in the home to be wasted by abuse and inadequate maintenance of the physical structure.

Enforcement of covenants has also failed in cases of resale-restricted condominiums when the administrative responsibility for ensuring compliance has been assigned to the homeowners' association governing that project. Consider, for example, a large, multiunit condominium project in which 10% of the units must be maintained as "affordable housing" because of inclusionary zoning or a density bonus granted by a local municipality to the project's developer. Because a majority of the project's units are market-priced condominiums, most members of the project's condominium association will have little interest in monitoring and enforcing the affordability of the project's resale-restricted units. Unfortunately, even less protection for long-term affordability may exist in projects where a majority of the units are resale-restricted because homeowners with an economic interest in removing the limits on their equity are being asked to ensure that those limits are rigorously enforced. For both reasons, homeowners' associations have proven to be an unreliable steward of long-term restrictions over the resale of condominiums.

Learning from past failures, governmental sponsors of deed-restricted homes have increasingly entrusted the task of enforcing restrictions over the use and resale of such owner-occupied housing to either a nonprofit organization or a public agency. This administrative entity monitors the occupancy and use of these homes and oversees all subsequent sales, ensuring that the homes are resold for the formula-determined price to another income-eligible buyer. This administrative entity either directly purchases and resells the property itself or closely monitors and approves the transfer of homes from seller to buyer. Under either arrangement, an interested third party is part of the deal, ensuring that the property is actually conveyed to the "right" buyer at the "right" price.

*Variations.* On occasion, the same use and resale restrictions normally appended to a property's deed are sometimes attached, instead, to a homeowner's mortgage. Frequently, but not always, this is a second mortgage, covering the amount of a low-interest or no-interest loan provided by a public agency to enable a low-income household to purchase the home. The loan is forgiven if the home is resold to another low-income household at a formula-determined "affordable" price. Otherwise, the loan must be repaid in full at resale.[21] Paying off the mortgage releases the homeowner from any continuing obligation to use the property in a particular way or to resell the property to an income-eligible buyer for a particular price. Rather than running with the deed and binding subsequent owners, any use or resale restrictions that are inserted into a mortgage are binding upon the current owner only – unless the mortgage is assumed by the subsequent owner. Covenants and options appended

to either a deed or mortgage have also been used as a second line of defense in protecting the affordability of owner-occupied housing developed through a community land trust or a limited equity cooperative. Although proponents of both models consider such redundancy to be unnecessary, because CLTs and LECs have built-in affordability protections of their own, public officials have nevertheless sometimes insisted on attaching affordability covenants to the deeds and mortgages of these other models of shared equity homeownership. This creates, in effect, a hybrid model, combining features of the deed-restricted home with those of the CLT and the LEC.

## HISTORY AND PREVALENCE OF DEED-RESTRICTED HOMES

The origins of this particular model of shared equity homeownership in the United States are somewhat obscure. Deed covenants restricting the use and resale of residential real estate have been around since Colonial times. Only in the last 30 years, however, have such covenants been widely enlisted in the cause of affordable housing, principally because public funders have made increasing use of affordability covenants to protect and extend whatever affordability their investment has bought. The rise, in particular, of state, county, and city housing trust funds that require long-term affordability as a condition of public funding has been a major factor in spurring the expansion of shared equity housing in general and deed-restricted housing in particular.[22]

**PROFILE**

Deed-Restricted Houses and Condominiums, Colorado

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The greatest spur to the growth and development of deed-restricted homes, however, has been the expanding use of inclusionary mandates and regulatory incentives to create affordable housing. Beginning in Fairfax County, VA, and Montgomery County, MD, in the early 1970s,[23] springing up in cities throughout New Jersey in the mid-1970s following Mt. Laurel I and II,[24] and proliferating in California, Massachusetts, and many other states during the 1980s and 1990s,[25] inclusionary housing has now become a mainstay of housing policies and plans in hundreds of cities and counties throughout the United States. Because deed-restricted houses, townhouses, and condominiums have been the primary means through which the affordability requirements of most inclusionary programs have been implemented, when the units extracted from private developers are to be owner-occupied, this particular model of shared equity homeownership has been growing faster than any other.

Inclusionary programs vary greatly from one jurisdiction to another, especially with regard to the percentage of "affordable" units required in a proposed project, the population targeted as the program's beneficiaries, the length of time that inclusionary units must be kept affordable, and the degree to which the requirements imposed on private developers are mandatory or voluntary. They vary, too, by the degree to which various regulatory concessions, density bonuses, fee waivers, and other regulatory incentives are offered as a quid pro quo for a developer's provision of lower-priced units. Despite their variety, most of these programs have at least one feature in common: they create a stock of housing that must not only be made affordable for households at a targeted level of income, but kept affordable for a specified period of time, one renter after another or one homeowner after another.

By no means do the encumbrances on these inclusionary homes everywhere endure for over 30 years, although more municipalities are moving in this direction. Even in Montgomery County, MD, where county officials stubbornly insisted for over two decades that five years or ten years was "long enough" to maintain the affordability of the owner-occupied housing created through the county's Moderately Priced Dwelling Unit (MPDU) program,[26] new policies and procedures have recently been enacted that significantly extend this control period. For an MPDU that is offered for sale or rent after April 1, 2005, the control period now lasts for 30 years for owner-occupied housing and 99 years for rental housing. If an owner-occupied MPDU resells within the control period, the clock is restarted, initiating a new 30-year period of affordability.[27] Many other cities and counties have had long-term controls since the inception of their inclusionary programs, not needing the painful experience of losing

thousands of units of deed-restricted housing before insisting on an affordability period lasting much longer than five, 10, or even 20 years.

How much deed-restricted housing actually exists? No one really knows. Unlike community land trusts and limited equity cooperatives, where a pair of national associations have tracked the development of CLT housing and co-op housing in the United States, no such clearinghouse exists for deed-restricted housing. Even at the state level, the data is sketchy. In New Jersey, for example, thousands of units of inclusionary housing have been created since the mid-1970s; yet the Council of Affordable Housing (COAH), the state agency tasked by the state legislature with responsibility for approving inclusionary plans for municipalities subject to *Mt. Laurel,* cannot say how many of these inclusionary units are owner-occupied – or how long their affordability must last. The nearest thing to an actual count appeared in a *Guide to Affordable Housing* published by the New Jersey Department of Community Affairs in 1999. At that time, there were 9,670 units of resale-restricted, owner-occupied housing that had been created under *Mt. Laurel* rules. Another 1,663 units of resale-restricted, owner-occupied housing were being subsidized under a variety of other public programs. How many of these units are still subject to durable controls over their use and resale? Has the number diminished since 1999 – or, more likely, has the number grown? No state agency can say.

Likewise in California, where over 107 cities and counties have inclusionary housing programs, the state maintains no centralized inventory of these inclusionary units. It is due only to the excellent work of two statewide nonprofits, the California Coalition for Rural Housing (CCRH) and the Non-Profit Housing Association of Northern California (NPH), that we know as much as we do about these inclusionary programs and the housing they have produced. In their groundbreaking publication of 2004, *Inclusionary Housing in California: 30 Years of Innovation,* CCRH and NPH revealed not only how many municipalities are now administering inclusionary programs but how widespread the municipal commitment to perpetuating the affordability of inclusionary units has become:

> Virtually all jurisdictions now report they have formal mechanisms to maintain affordability over time. Restrictions range from periods of 10 years to in perpetuity, with the mean term for rental housing being 42 years and for homeownership being 34 years. Permanent affordability is reported in at least 20% of programs for both rental and for-sale. (CCRH/NPH, 2004: iv)

Unfortunately, while this report gives an indication of the prevalence of long-term affordability controls among California's inclusionary programs, it contains no breakdown that would allow us to say how many of the state's inclusionary units are owner-occupied versus renter-occupied, how many are subject to affordability restrictions lasting at least 30 years, or which "formal mechanisms" are being employed to maintain their affordability. Furthermore, because the report is focused only on units created through inclusionary zoning, its estimate of 34,000 resale-restricted units does not include thousands of additional resale-restricted units created by the state's 400 community redevelopment agencies. These agencies are required, under California's Redevelopment Law, to impose 45-year affordability controls on all homeownership units created using tax increment financing and other funds set aside for low- and moderate-income housing.[28]

If the data available from New Jersey and California on the prevalence of deed-restricted housing can be described as "sketchy," the data available from other states is practically nonexistent. Sometimes a particular city or county is able to say how many deed-restricted homes have been created through various public programs, but there is a tendency among too many public agencies to assist in bringing these units into being and then to forget about them.[29] Relatively few maintain an accurate and up-to-date record of the number of deed-restricted homes created year by year or the accumulation of such housing over time. There are exceptions. The City of Boulder, for example, closely tracks nearly 500 deed-restricted units created under its mandatory program of inclusionary zoning. Similarly, ARCH in King County, WA, continuously monitors and enforces the affordability

of over 100 units of deed-restricted housing on behalf of fifteen municipalities. In Massachusetts, a state-funded system monitors and manages the resale of over 3,000 deed-restricted homes.[30]

At the national level, however, all that we know with a reasonable degree of confidence is that hundreds of jurisdictions are now using discretionary funds, zoning mandates, and regulatory incentives to create deed-restricted, owner-occupied housing with lasting affordability. There is reason to believe that, at any one time, there may be anywhere from 30,000 to 50,000 units of deed-restricted housing in New Jersey and California alone. An order of magnitude estimate for the rest of the United States might add as few as 100,000 units to the total or as many as 300,000. There is no way of knowing, however, how accurate either estimate may be.

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Homes for Good, Massachusetts
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All that can be said for certain is that deed-restricted housing is growing at a faster rate than any other model of shared equity homeownership. This growth is driven by several factors: the relative familiarity of deed-encumbered homeownership vis-à-vis more exotic approaches to ownership (like CLTs and LECs); the lower administrative cost of monitoring affordability covenants that are mistakenly but widely believed to be "self-enforcing"; and the proliferation of public programs that compel or cajole private developers into including a minority percentage of "affordable" units among the market-priced homes they are offering for sale to more affluent buyers. For all of these reasons, the growth of deed-restricted housing is likely to outstrip all other forms of shared equity homeownership for many years to come.

## Community Land Trusts

The housing created through a community land trust (CLT) bestows on its occupants nearly the same rights of ownership that are held by the owner of a deed-restricted home. The owners of CLT homes, however, lease rather than own the underlying land. CLT homes are encumbered with the same kinds of restrictions on use and resale as those contained in the covenants of the previous model. Instead of imposing these restrictions through a covenant appended to a homeowner's deed, however, the contractual mechanism employed by a CLT to control the present use and future affordability of owner-occupied housing is a ground lease. These controls last as long as the lease. Since CLT ground leases endure for a very long time, binding all subsequent owners of the housing located on a CLT's land, the affordability of this housing can be maintained for many years. Indeed, permanent affordability is the commitment made by most CLTs.

### AN ALTERNATIVE FORM OF HOMEOWNERSHIP

The community land trust (CLT) is a dual ownership model: one party holds the deed to a parcel of land; another party holds the deed to a residential building located upon that land. The owner of the *land* is a nonprofit, community-based corporation, committed to acquiring multiple parcels of land throughout a targeted geographic area with the intention of retaining ownership of these parcels forever. The owner of the *building* is typically an individual homeowner, holding title to a detached house or an attached townhouse located on the CLT's land. There are many other cases, however, where the building is a multiunit condominium, a multiunit cooperative, a multiunit rental complex, or a mixed-use structure containing both commercial and residential space. In these instances, the building's owner may be a common interest community, a cooperative housing corporation, a nonprofit corporation, a limited partnership, or even a for-profit business.

Although CLTs do not resell their land, they provide for the exclusive use of their land by the owners of the buildings located thereon. Parcels of land are conveyed to individual homeowners (or to the owners of other types of residential or commercial structures) through a ground lease. This lease typically runs for ninety-nine years, unless a shorter term is required by state law. The lease is renewable and inheritable, giving homeowners (and their heirs) an exclusive right to occupy the land on which their homes are located.

The owner-occupants of CLT housing – or, more accurately, the owner-occupants of housing located on a CLT's land – hold most of the "sticks" in the bundle of rights that are traditionally held by the owner of a market-rate home, including those associated with security of tenure, privacy of use, equity on resale (*if* there is equity), a legacy for one's heirs, and the right to control and to change one's own living space according to personal preferences and needs. These rights are secured through the homeowner's possession of a deed for the building and a long-term lease for the underlying land.

The ground lease is the contractual means by which several important "sticks" in the homeowner's typical bundle of rights are regulated or removed. Absentee ownership is prohibited. The homeowner/leaseholder must occupy the home as his or her primary residence. Subletting of the house and the land is not allowed, without prior permission of the nonprofit landowner – i.e., the CLT. If such permission is granted, a limit is usually placed on the length of time the homeowner may be absent and the amount of rent the homeowner may charge. Similar controls are imposed on the homeowner's right to improve the property. Permission from the CLT is required for major capital improvements proposed by the homeowner. The ground lease also regulates the maintenance and mortgaging of CLT homes. Should buildings become a hazard, the ground lease gives the CLT the right to force repairs. Should owners default on their mortgages, the ground lease gives the CLT the right to step in and cure the default, forestalling foreclosure.

The ground lease is also the contractual means by which the CLT preserves the continuing affordability of any residential buildings located upon its land. Embedded in the ground lease is a preemptive option, setting forth a formula for determining the resale price of the CLT home and granting the CLT the first right to repurchase the home for this formula-determined price. Whenever a leaseholder/homeowner decides to sell, the CLT either repurchases the property itself, reselling it immediately to another income-eligible homebuyer for approximately the same below-market price that the CLT paid to the departing homeowner, or it monitors and approves the property's direct conveyance from seller to buyer, ensuring that the home is resold to an income-eligible household for the formula-determined price. The CLT resale formula is designed to give departing homeowners a *fair return* on their investment, while giving future homebuyers *fair access* to housing at an affordable price – one homebuyer after another, one generation after another.

Responsibility for monitoring and enforcing all of these restrictions on the use and resale of owner-occupied housing rests with the CLT. The community land trust is a community-based organization, with a membership that is open to any adult who lives within the geographic area that the CLT defines as its "community." All of the CLT's homeowner/leaseholders are also members. One-third of the CLT's board of directors is elected to represent the interests of members who are leaseholders. One-third is elected by the members who are not leaseholders. The final third is nominated and appointed by the two-thirds who have been elected. Within this appointed third, seats may be reserved for representatives of local government, private lenders, or other community-based organizations. This tripartite structure is intended to balance the short-term interests of those who occupy CLT housing – residents who may someday have the greatest economic interest in removing the restrictions on use and resale – with the long-term interests of the larger community.

*Variations.* Although most CLTs in the United States have been created "from scratch," as newly formed, independent corporations, some have been established as successors, affiliates, or programs of an older nonprofit housing organization. Either an existing nonprofit transforms itself into a community land trust or grafts selected elements of the CLT model onto its own structure and programs. Sometimes, when a new CLT is established within the corporate shell of a preexisting organization, the CLT becomes a permanent part of the nonprofit's ongoing operations. Other times, this is a temporary, transitional arrangement, with the CLT eventually spun off as a separate corporation when it has the capacity and constituency to thrive by itself.

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Sawmill Community Land Trust, New Mexico

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Nearly every community land trust is an open-membership organization, drawing its members from a community that is geographically defined. There are many variations, however, in the size of that service area and in the make-up of that membership. A decade ago, the "community" served by most CLTs was a single inner-city neighborhood or a narrowly defined rural district. In recent years, however, many CLTs have staked out a much wider service area. Now, a number of urban CLTs encompass multiple neighborhoods, an entire city, or a whole metropolitan area. A number of rural CLTs encompass an entire county. A few regional CLTs exceed the boundaries of both city and country, developing resale-restricted housing in inner-city neighborhoods, in suburban enclaves, and in rural communities beyond the urban fringe.[31]

Variations have occurred, here and there, in the composition of the CLT's membership. Some CLTs, for example, have opened their membership to individuals who reside outside of the CLT's service area. Other CLTs have expanded their membership beyond individuals, allowing nonprofit corporations, local governments, or private institutions like hospitals, churches, or foundations to become voting members of the CLT. There are a few CLTs with no membership at all, although these tend to be situations where selected elements of the CLT model have been grafted onto an existing community development corporation.

There are many variations in the pace of development and the kind of development pursued by CLTs. Many have grown quite slowly, each year purchasing a few parcels of land on which are constructed (or rehabilitated) a handful of single-family houses. A few CLTs have grown rapidly and aggressively, regularly acquiring multiple sites or larger tracts of land on which many homes are developed every year. Some CLTs focus on a single type of housing, like detached "starter homes," or a single form of tenure, like owner-occupancy. Some have created hybrid forms of tenure, developing limited equity condominiums, limited equity cooperatives, mobile home parks, or subsidized rental housing on lands that are leased from the CLT. Some have concentrated on more than housing, modifying the residential CLT ground lease to accommodate the development of commercial buildings, community facilities, vest pocket parks, community gardens, or commercial agriculture on leased land.

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Time of Jubilee Community Land Trust, New York
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Finally, there are many different roles that CLTs have chosen to play in their own communities. Some assume major responsibility for the comprehensive redevelopment of a targeted locale. Some assume sole responsibility for developing, marketing, and managing many types and tenures of housing. Some CLTs leave most of these tasks to others, however, and confine their efforts to assembling land, leasing land, and preserving the affordability of any housing located upon it.[32] Between these extremes of the CLT-as-developer and the CLT-as-steward lies a variety of roles, with every CLT deciding for itself what it should do and can do, given its mission, constituency, and capacity.

## HISTORY AND PREVALENCE OF CLT HOUSING

Compared to deed-restricted homes and limited equity cooperatives, the community land trust is a rather recent arrival in the United States, although in many other countries and cultures the trusteeship and stewardship of land for the common good has had a long history. Examples include tribal lands among the native peoples of North America and South America, the Ejidos of Mexico, the "commons" of England, the Crofter system in Scotland, tribal lands in Africa, the Gramdan movement in India, and the Jewish National Fund in Israel. In the United States, Ralph Borsodi (1886–1977) and Robert Swann (1918–2003) drew upon these cultural traditions and practical examples in assembling the intellectual components of the modern-day community land trust.[33] Borsodi established a leasehold community at the School of Living in Rockland County, NY, in 1936 and inspired the development of Bryn Gweled in 1940, a residential community on leased land outside of Philadelphia. Nearly 30 years passed, however, before Swann, Slater King (a cousin of Martin Luther King), C.B. King, Charles

Sherrod, and other civil rights activists in southern Georgia founded New Communities Inc., the first nonprofit organization created with the express intention of implementing the CLT model.[34] New Communities was established in 1968, on 5,735 acres of rural land near Albany, GA. Its founders' vision of creating dozens of residential and agricultural leaseholds for the families of African-American farmers was never realized, however, and the land was eventually sold. Nevertheless, New Communities gave Swann and his colleagues at the International Independence Institute an opportunity to test and to refine ideas about land leasing and community development that Borsodi had proposed years before. In 1972, they presented these ideas in a book entitled *The Community Land Trust: A Guide to a New Model for Land Tenure in America.*

Although more a conceptual outline than a detailed blueprint, this book inspired the formation of a handful of CLTs in the coming years. Most were small, rural, intentional communities of like-minded people. But, here and there, the model began to be used more expansively and inclusively as a vehicle for redeveloping lower-income communities and expanding (and preserving) lower-cost housing. CLTs also began appearing in urban neighborhoods. The first inner-city CLT, the Community Land Cooperative of Cincinnati (CCLC), was established in 1980, formed by a coalition of local clergy to counter the threat of gentrification in an historic neighborhood of low-income, African-American families.[35] They were aided in their efforts by the Institute for Community Economics, the successor to Swann's International Independence Institute. Over the next two decades, dozens of groups like the CLCC were to receive similar assistance from ICE, drawing upon its technical staff, its revolving loan fund, and its publications for assistance in creating a CLT.[36]

In many communities, the initiative for forming a CLT came from grassroots activists who saw in the CLT a tool for insulating a portion of a neighborhood's affordable housing against rising prices and displacement pressures brought about by public or private investment. In many other communities, however, CLTs were started by different sponsors and for different reasons. In Burlington, VT, Portland, OR, State College, PA, and Chicago, for example, the push to create a CLT came from municipal officials who saw in the model a means of expanding and preserving access to homeownership, while protecting the city's investment in affordable housing. In Boston, Syracuse, and Albuquerque, CLTs were sponsored by existing nonprofits as a mechanism for assembling, holding, and developing larger parcels of land in support of comprehensive plans for community development. In Rochester, MN, and Jackson, WY, the impetus for forming a local CLT came from major employers whose primary concern was attracting and retaining key workers.

When Swann and his colleagues published their *Guide to a New Model of Land Tenure for America* in 1972, no CLT actually existed in the United States, at least none that precisely matched the model they were proposing. Ten years later, when ICE published *The Community Land Trust Handbook,* describing more fully the rationale, the structure, and the essential ingredients of organizing and operating a CLT, the authors could find only a half-dozen organizations that exemplified the model described in their book. By the end of the 1990s, however, ICE was able to document the existence of 118 community land trusts, scattered across 31 states and the District of Columbia, with 86 of them owning one or more parcels of land on which resale-restricted housing was being developed.[37]

The growth of CLTs during this period was supported by many of the same governmental programs that were spurring the expansion of deed-restricted housing. Especially in jurisdictions where a housing trust fund or an inclusionary housing program insisted on *permanent* affordability for owner-occupied homes produced with public support, there was fertile ground for CLT development. At the federal level, CLTs got a boost in 1992, when a definition of community land trusts was added to a set of amendments to the National Affordable Housing Act, making start-up CLTs eligible recipients for HOME funding and favored recipients of HUD-funded technical assistance.[38] Financing resale-restricted homes on CLT lands also got easer in 2001, when Fannie Mae approved a Uniform Community Land Trust Lease Rider and issued formal guidelines for appraising CLT

leaseholds.[39] With newfound support from HUD and Fannie Mae, the number of CLTs and the number of CLT homes increased.

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Burlington Community Land Trust, Vermont

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As of May 1, 2006, there were 162 nonprofit organizations in the United States with real estate holdings that were operating as CLTs: leasing out land for residential use and stewarding the affordability of any housing located thereon. Another 29 nonprofits had been established as CLTs but had not yet acquired their first property. There were also 15 CLTs under active development which had not yet been incorporated.[40] No one knows how much resale-restricted, owner-occupied housing the nation's CLTs may currently control. An order of magnitude estimate might put the total as low as 5,000 units or as high as 9,000 units. Either number is pretty low, reflecting the short history, small scale, and low productivity of the majority of the nation's CLTs. The homeownership portfolio of the largest CLT in the United States, located in Burlington, VT, contains 386 resale-restricted houses, duplexes, and condominiums, plus another 125 units that are owned and operated by limited equity cooperatives. Only a handful of the nation's CLTs have a portfolio of owner-occupied housing that is even close to this size.

Here and there, however, there are a few "blockbuster CLTs poised to grow" (Herman, 2006). The City of Chicago, for example, with the support of the MacArthur Foundation, has recently established a community land trust to act as the steward of affordability for hundreds of units of municipally subsidized, owner-occupied housing throughout the city. With funding provided by county and city governments, a countywide CLT in Sarasota, FL, has committed itself to producing 3,000 resale-restricted, owner-occupied homes over the next ten years. In Irvine, CA, on March 14, 2006, the City Council approved a housing strategy that sets a goal of creating 9,700 new units of affordable housing by 2025, representing approximately 10% of the city's entire housing stock. All of these units will be developed in conjunction with the city-sponsored Irvine Community Land Trust, which shall have responsibility for maintaining the affordability of these homes in perpetuity.

Although it is clearly years away from matching the productivity and acceptance of other market and nonmarket models of housing, the fledgling CLT movement in the United States has caught the attention of housing activists and public officials in several other countries, especially in Canada and the United Kingdom.[41] In Canada, the leading role in CLT development has been played by the Cooperative Housing Federation of British Colombia.[42] In the mid-1980s, the Federation became increasingly concerned about the potential loss of affordable cooperative housing. Most Canadian housing cooperatives lease land from governmental bodies. These leases typically have the same duration as the mortgage on the co-op's buildings. Once the mortgage period is over, the leases lapse. They may be renewed, should a later government share the same commitment to affordable housing as the administration that entered into these co-op leases, but that is far from certain. Also, these leases typically contain escalation clauses that are based on a percentage of market rents in the area. As ground rents rise in the market sector, the lease fees owed by the housing co-ops increase as well. By the early 1990s, this was having a major impact on the continuing affordability of cooperative housing, especially in hot markets like Vancouver.

Responding to this gathering threat to the affordability and viability of cooperative housing, the Federation developed the Community Housing Land Trust Federation (CHLTF) as a mechanism for ensuring the permanent affordability of cooperative housing in Canada. CHLTF became a nonprofit charitable society in 1993. Since 1996, with support from the provincial government, lands underlying housing cooperatives in British Colombia have been steadily transferred to the CHLTF. In recent years, a Land Trust Development Fund has been established to enable the CHLTF to acquire additional lands that can be used to develop new housing cooperatives with ground leases that are permanently affordable.

Around the same time that the CHLTF was being developed in Canada, the CLT model was making its first appearance on the other side of the Atlantic, beginning in

Scotland. The buyout of the North Lochinver Estate by the Assynt Crofters in 1993 and establishment of the Isle of Eigg Heritage Trust in 1997 laid the foundation for a rapidly growing Scottish CLT movement. The success of these two grassroots efforts attracted the attention of a local Member of Parliament, who secured government support for the creation of the Scottish Community Land Unit (CLU) to provide technical assistance for further CLT development. In 2001, the CLU secured Lottery funding to establish a Scottish Land Fund to assist local communities in acquiring land. By 2003, the CLU had a 15-person staff and an annual budget of £5 million to support CLT projects throughout Scotland.[43]

Further south, in England, the pace of CLT development has been slower, although interest in the model has spiked in recent years.[44] CLTs are presently in existence or in development in Oxfordshire, Stroud, and Devon County. In Birmingham, the City Council and the Housing Corporation commissioned a study in 2002 to examine the feasibility of establishing a local CLT to acquire and rehabilitate housing in three low-income areas of the city. The report concluded, according to Crowe (2004: 9), that "the CLT has the potential to play a wide variety of roles and deliver many benefits to the diverse communities in question." A similar study is presently underway in London, where the Greater London Authority has proposed using a CLT to facilitate the clearance of dilapidated housing and the development of resale-restricted, cooperatively owned housing in the Oldham Pathfinder area. London's recent selection as host city for the 2012 Olympic Games may act as a spur to neighborhood redevelopment, especially in areas likely to be chosen as venues for Olympic events.

## Limited Equity Cooperatives

There are three types of housing cooperatives in the United States: market-rate cooperatives, limited equity cooperatives, and zero equity (or par value) cooperatives. In market-rate cooperatives, the transfer value of corporate shares, purchased and resold by individual homeowners, is determined by a market appraisal. Although the members (or directors) of a market-rate cooperative may have the right to approve prospective buyers of these shares, they neither dictate nor approve the price at which co-op units are resold. No provision is made for protecting the ongoing affordability of this market-rate housing. By contrast, affordability is a paramount concern of both the limited equity cooperative (LEC) and the zero-equity cooperative. In the former, homeowners are allowed a modest growth in equity between initial purchase and eventual resale of their corporate shares. In a zero-equity cooperative, there is no growth in the homeowner's investment. Homeowners resell their shares for essentially the same price they paid when purchasing them.

Often, there is a fine line between these latter two types of cooperative. Indeed, in its own count of cooperative housing, the National Association of Housing Cooperatives does not even attempt to differentiate between cooperatives that are limited equity and those that are zero equity. We take a different tack in the coming discussion and focus mainly on cooperatives that allow a modest increase in a homeowner's equity. It must be acknowledged, however, that real differences in the structure and performance of a limited equity cooperative versus a zero equity cooperative are often slight. There may also be little practical difference in the amount of equity actually realized by members of the two types of cooperative when reselling their shares, depending on the resale formula adopted by a particular LEC, the degree of demand for its shares, and the terms and conditions of its blanket mortgage.

### AN ALTERNATIVE FORM OF HOMEOWNERSHIP

Cooperative housing is operated and governed by a state-chartered corporation whose shareholders are drawn exclusively from those who occupy the housing. The cooperative housing corporation is the owner of record of the residential real estate. The corporation owns the deed, holds the mortgage, and pays all municipal taxes and fees on the real estate.[45] The occupants of a co-op's housing are the owners of shares in the same corporation from which they lease their homes. They are homeowners, albeit homeowners of a special kind. They do not hold title to their individual homes, but they do own shares in the corporation that owns their home. They are also

voting members of that same corporation, with ultimate control over its assets, its operations, and its enforcement of any restrictions on the use of individual apartments and the resale of individual shares. An occupant's exclusive use of his/her house, apartment – or, in the case of a mobile home cooperative, the lot underlying a manufactured home – is secured by a proprietary lease between the cooperative housing corporation and the homeowner.[46] The occupant of cooperative housing, therefore, is simultaneously a shareholder, a member, and a leaseholder. These rights and roles are inseparable.

The legal mechanism by which these rights and roles are spelled out and tied together is fairly complex. The only aspects needing elaboration here are those that distinguish the limited equity cooperative from its market-rate counterpart – that is, the social controls that make long-term affordability a reality. An occupant's ownership interest cannot be resold for more than the maximum price determined by a formula embedded in three documents: the *subscription agreement*, which serves as both a "buyer beware" disclosure document and a purchase-and-sale contract for the prospective purchaser of co-op shares; the *stock certificate*, which evidences the occupant's ownership of a specified number of co-op shares; and the *bylaws* of the corporation itself. These documents disclose and impose a contractual cap on the price a homeowner may charge and the equity a homeowner may claim when reselling his or her shares. They also grant the cooperative corporation, in most cases, a preemptive right to repurchase these shares for their restricted, formula-determined price.[47]

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Beecher Cooperative, Washington, DC

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This formula-determined price may be considerably lower than the market value of a member's share, depending on market conditions and the formula's terms.[48] The formula-determined price may still be considerably higher, however, than the price initially paid by the departing member when first joining the cooperative. In some limited equity cooperatives, member-owners may resell their shares and walk away with a significant increase in personal wealth, even though their shares remain relatively affordable for subsequent buyers. In other limited equity cooperatives, member-owners may walk away with very little appreciation, because of low demand for coop housing or because of a resale formula that is highly restrictive. Cooperatives that adopt resale formulas that restrict the transfer value of members' shares to little more than their value at the time of purchase are often called "par value," "zero equity," or "nonequity" housing cooperatives.

A cooperative housing corporation is governed by a board of directors elected by the member-owners who occupy the corporation's units. The directors of a limited equity housing cooperative are elected on the principle of one member, one vote, with each housing unit representing a single membership. Most market-rate cooperatives, by contrast, assign votes on the basis of the number and value of shares. The occupants of more valuable units control more shares and cast more votes than those who occupy less valuable units.

The board of directors in a limited equity cooperative has responsibility for monitoring and enforcing restrictions over the use of individual units and the resale of individual shares. In most cooperatives, this means that the directors – or, in larger projects, the co-op's management company acting on behalf of the directors – will repurchase the share(s) of a departing member for the formula-determined price and resell those share(s) to an incoming tenant at the same restricted price. Since the cooperative housing corporation is directly involved in both transactions, there is little risk of the cooperative apartment changing hands at a cost exceeding the limited equity price.

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Hermitage Manor Cooperative, Illinois

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A risk to affordability is inherent, however, in the organizational structure of the cooperative itself. The task of preserving the long-term affordability of a project's units is assigned to residents with a personal stake in the long-term profitability of those units.

Over time, if the market value of a cooperative's shares grows to a point where it is substantially greater than the formula-determined price, the economic incen-

tive can become enormous for the members to amend the corporation's bylaws, relaxing or removing previous restrictions on the transfer value of the co-op's shares. Because of this vulnerability, a number of cooperative housing corporations that were limited equity cooperatives when founded are market-rate cooperatives today.

*Variations.* Learning from these cases of lost affordability, some proponents of cooperative housing have experimented with organizational variations that mix the co-op model with other models of shared equity housing. One promising hybrid combines the LEC and the CLT, developing cooperatives on land that is leased from a community land trust.[49] Another "mixed model" employs deed restrictions to safeguard the long-term affordability of limited equity cooperatives holding publicly funded mortgages with regulatory agreements that are coming to an end. The eligibility standards and affordability protections contained in these deed covenants are designed to outlive those contained in the cooperative's regulatory agreement, which lapse when the mortgage is paid off.

Other LEC variations endeavor to preserve the cooperative's founding commitment to long-term affordability by modifying the composition of the governing board. Instead of a board made up exclusively of members residing in the co-op's units, some cooperatives have boards with a block of seats occupied by people who are neither members nor residents. These "outside" directors are, in some cases, directly appointed by the nonprofit organization that developed the cooperative in the first place. In other cases, they are appointed by a majority of the directors who reside in the co-op. The purpose behind such tinkering with the cooperative's governing structure is to make it more difficult for a temporary majority of self-interested shareholders to amend the corporate charter and to remove affordability controls on the members' shares.

Other variations in the structure and performance of LECs have been prompted by the application of this model to different types and tenures of housing. While the most common type of housing owned and managed under a cooperative regime in the United States (and elsewhere) has been a multi-unit apartment building in an urban neighborhood, a cooperative structure has also been used, on occasion, for the development of row houses, townhouses, or detached, single-family houses scattered throughout a neighborhood, city, or town. Other co-op projects have provided a mix of cooperative apartments and commercial or residential condominiums in the same building. LECs have also been used in rural areas to develop farmworker housing or to preserve the availability and affordability of mobile home parks.[50] For example, in New Hampshire, 72 mobile home parks have been converted since 1984 into resident-controlled cooperatives. With support from the Ford Foundation and in concert with the Corporation for Enterprise Development's "I'M HOME" program, the structures and techniques pioneered in New Hampshire for converting at-risk mobile home parks into cooperatively owned and operated manufactured housing communities are being spread around the country.

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Resident-Owned Manufactured Communities, New Hampshire

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## THE HISTORY AND PREVALENCE OF COOPERATIVE HOUSING

The modern cooperative movement is based on principles developed by a group of weavers in Rochdale, England in 1844. Most cooperatives, including those dedicated to the provision of housing, are still guided by these principles today, although the Rochdale commitment to a limited return on investment is generally missing from the market-rate model.

The first housing cooperatives in the United States were established in New York City in the 1870s, although significant co-op development did not occur until the years between World War I and World War II. During this period, before the legal innovation of condominiums, cooperative housing was the "only practical way of ownership in multifamily buildings."[51] Early New York City housing cooperatives were organized by immigrant associations or labor unions to provide affordable housing for their members. The union movement was also instrumental in marshalling political support for the first legislative initiative promoting the development of housing cooperatives for low- and moderate-income

households, the New York Housing Act of 1927. This legislation enabled the condemnation and assembly of land for the construction of housing cooperatives and granted these projects 50-year tax exemptions on any increase in value resulting from newly constructed housing.

The federal government became a major backer of cooperative housing after World War II with the enactment of the 1949 Housing Act.[52] Section 213 of that legislation, added in 1950, allowed co-ops to take advantage of FHA mortgage insurance, provided 98% financing for the construction of new housing cooperatives, and allowed a 40-year term for blanket mortgages.[53] Section 213 turned out to be one of HUD's most successful programs. Not only did it result in the creation of 200,000 cooperative units, Section 213 loans have outperformed all other loan programs in HUD's portfolio. Default rates on Section 213-insured cooperatives have been lower than for any other HUD multifamily program.[54]

Cooperatives received two other boosts from the federal government in 1954 and 1968 with the addition of Section 221(d)(3) and Section 236 to the National Housing Act. [55] Section 221(d)(3) provided loans at below-market interest rates (BMIR) to cooperatives, covering up to 100% of construction or rehabilitation costs and offering 40-year mortgages for developments of five units or more.[56] The 221(d)(3) program also mandated a number of controls that were designed to protect the affordability of cooperative housing for the full 40-year term of its HUD-insured mortgage, including income limits on new members, restrictions on increases in share value, and substantial penalties for prepayment of the BMIR mortgage. Section 221(d)(3) was later replaced by Section 236, which reduced the rate on BMIR loans from 3% to 1%, but also pegged the amount of subsidy to the household income of a cooperative's members. As a household's income increased, the federal subsidy was reduced, requiring residents to pay more. In the 1960s and 1970s, over 100,000 units of cooperative housing were built with the assistance of Section 221(d)(3) and Section 236.

In addition, over 100,000 units of affordable, cooperative housing have been created with the assistance of state governments and state housing finance agencies. The most successful and productive of these state initiatives was the Mitchell-Lama program, enacted by the New York state legislature in 1955.[57] Mitchell-Lama encouraged the construction of new housing cooperatives by providing low-interest loans and property tax exemptions to private developers who agreed to limit their dividends. Eligibility was restricted to moderate-income households, although one-sixth of the units went to low-income families.[58] Approximately 60,000 units of cooperative housing were developed under this program in the 1950s and 1960s.

The development of housing cooperatives has also been encouraged and assisted, on occasion, by city governments. The two most productive municipal initiatives have been New York City's Tenant Interim Lease Program and Washington, DC's "right of first refusal" legislation, providing assistance to tenants in purchasing their buildings and converting them into limited equity cooperatives. New York City's Tenant Interim Lease Program (TIL) and its Community Management Program (CMP), established in 1978, are among the oldest and largest municipal programs in the country for transferring tax-foreclosed property into private, nonmarket ownership. Under these programs, the tenants of tax-foreclosed buildings receive training in the organization and management of cooperative housing, funding for repairs and rehabilitation, and, eventually, clear title to their buildings. By 2003, according to New York City's Department of Housing Preservation and Development, 795 buildings, containing 16,692 units, had been converted through TIL and CMP into tenant-owned, low-income, limited equity housing cooperatives [59]

The District of Columbia has been supporting the development of limited equity cooperatives since 1977, when the City Council enacted into law a provision giving tenants the first right to purchase their buildings if put up for sale. Additional tenant protections were put in place in 1980, along with several programs providing low-interest loans, training, and assistance for tenants interested in buying and operating their buildings as limited equity cooperatives.[60] In the 25 years that DC's government has been supporting such co-op conversions, 81

**Figure 2.1**

## Cooperative Housing Units in the USA

### Limited or Zero Equity Cooperatives

| | | |
|---|---|---|
| HUD - Insured and assisted | 148,000 | |
| Lanham Act | 35,000 | |
| Former public housing | 20,000 | |
| Farmers Home | 5,000 | |
| Mitchell-Lama (NY) | 60,000 | |
| State housing finance agencies | 45,000 | |
| United Housing Foundation (NY) | 40,000 | |
| Tenant Self-converted/UHAB | 50,000 | |
| CDBG/LIH tax credit | 7,000 | |
| Mutual housing | 15,000 | |
| **Total** | | **425,000** |

### Market-Rate Cooperatives

| | | |
|---|---|---|
| Conventional, new construction | 100,000 | |
| HUD-insured | 109,000 | |
| Membership-sponsored | 6,000 | |
| Conventional conversions of rental | 550,000 | |
| **Total** | | **765,000** |
| **U.S. Total, All Cooperatives** | | **1,190,000** |

LECs have been formed. As of 2004, 57 were still operating as limited equity cooperatives, containing a total of 2,269 units.[61]

The National Association of Housing Cooperatives has estimated that there are over one million units of cooperative housing in the United States (see Figure 2.1). Three-quarters of this housing, approximately 765,000 units, are contained within market-rate cooperatives. Another 425,000 units are contained within limited equity or zero-equity cooperatives.[62]

Outside of the United States, cooperative housing has been a more dominant form of tenure. In Sweden, for example, the cooperative sector accounts for 15% of the nation's total housing stock. In Norway, cooperatives make up 14% of the country's housing. In Germany, two-thirds of all social landlords are *Genossenshaften,* cooperatives backed by community organizations. In Turkey, there are 40,000 housing co-ops with nearly 1.8 million members. In Canada, cooperatives are the largest nonprofit housing provider.

These cooperatives are structured in different ways, from one country to another. The main characteristic that varies is the kind of equity stake that is owned by individual members. Canada, Denmark, and Britain have non-equity co-ops. Sweden and Norway have a mix of market-rate and limited equity cooperatives. The LECs of these latter two countries have been undergoing a process of commodification during the past 30 years, however; strict controls over the resale of co-op shares are gradually giving way to unfettered pricing on the open market.

In Canada, the cooperative form was little used prior to the 1970s, although federal support for cooperative housing had been recommended in national plans for reconstruction following World War II.[63] In 1973, as the government began moving away from public housing, the National Housing Act was amended to provide housing cooperatives with 50-year mortgages at preferred rates and grants covering 10% of the cooperative's capital costs. Start-up funding was also provided, along with rent supplements for 25% of the units in each cooperative, to ensure a mix of households at different levels of income. By the 1990s, nearly 60,000 units had been created in over 1,700 par value cooperatives. By 2002, the number had grown to 90,000 units in 2,100 cooperatives, housing a quarter of a million people.

Ironically, in England, the country that gave birth to the cooperative movement, housing cooperatives have been largely overshadowed by other approaches to providing affordable housing for low- and moderate-income households, including a very large sector of socially rented housing. Cooperatives have long enjoyed the support of every major political party, but such support has never translated into major funding from the national government for this form of housing.[64] Less than 2% of Britain's total housing stock is owned or managed by cooperatives today, with the greatest number to be found in Scotland, where about 40 Community Ownership organizations control some 13,000 dwellings. This modest portfolio masks a rich history of cooperative development, however, and a recent revival of interest in cooperative housing.[65]

The history of British housing cooperatives is

marked by wide experimentation with two models: "tenant co-partnership" and "co-ownership." The tenant co-partnership form of cooperative began in 1901, with the founding of Ealing Tenants. The aim of co-partnership was to combine the best elements of renting and owning. Tenants would be joint owners with outside investors. Most schemes demanded a £50 investment by each household, a significant sum at a time when the cost of building a small house was around £125. Like owner-occupiers, tenants were responsible for repairs and improvements inside the home. Outside investors played the role of private landlords, collecting rents on that portion of the property not covered by the tenants' investment. Risks to these outside investors were minimized by the financial involvement of the tenants. Loss of income was negligible, since less than 5% of the tenants moved each year and rent arrears were almost nonexistent. Furthermore, the investors did not have to give tenants real control. Voting rights went with the number of shares, most of which were held by the investors. Tenants were always in the minority on the board of directors.

A central body, the Co-partnership Tenants Housing Council, was set up to promote the idea and societies began springing up all over Britain. In 1907, the Council became a federation, Co-partnership Tenants Ltd. This central body coordinated loan finance, advised on site plans, performed some of the on-site building work, and set up two subsidiaries for buying materials and providing ready-made joinery. The most famous co-partnership estates were created at Hampstead Garden Suburb (5,650 homes) and Letchworth Garden City (323 homes).

The First World War interrupted the movement, leaving several co-partnership societies with more land than they could build on. After the war, although supporters made sure that co-partnership was given the same access to government aid under the 1919 Housing Act as public housing, the rise of local council authorities building for themselves overshadowed co-partnership. Existing co-partnership societies completed the build-out of their estates, but few new ones were formed. Some were set up as partnerships between local council authorities and large employers in South Wales. Ebenezer Howard also used the model in establishing his Welwyn Garden City. Generally, however, the energies of housing reformers switched to council housing after World War I and the co-partnership movement declined.

The demise of co-partnership and the rise of conventional public housing meant that cooperative housing did not reappear until after the Second World War, and then only in one isolated ownership co-op, at Dronfield. In 1961, a new cooperative experiment began, as the Tory government promoted co-ownership as a step towards owner-occupancy. Members purchased shares in a co-ownership society for a nominal amount, thus gaining the right to inhabit a cooperative apartment. Their equity stake increased modestly over time. A new society was registered by founder members, who were usually the committee members and staff of a local housing association. They had the project designed and built, selected the first co-owners, and then tied the cooperative to a management agreement with the local association for up to seven years. Between 1961 and 1977, 1,222 co-ownership societies were formed, producing over 40,000 dwellings.

This form of tenure was troubled from the start by the top-down way in which co-ownership societies were developed, by under-funding and over-regulation, and by the lack of real control that the tenant-members were able to exert over their housing. Six months after full occupancy, resident members were supposed to be elected, taking over control of their project. Too often, this did not happen for several years. When residents did gain control, they were seldom allowed by the Housing Corporation which had financed their housing to do any self-management. Sometimes, members wanted to get rid of their managing agent, only to find that they were locked into long-term contracts that officials at the Housing Corporation were reluctant to cancel. The 1980 Housing Act, put forward by the Tory government to encourage privatization, allowed resident members to dissolve their co-ownership societies and to purchase their dwellings. Most chose to do so.

There have been three other streams of cooperative housing development over the past 30 years.[66] In 1974, the Labour housing minister, who was himself a co-op activist, allowed housing cooperatives to receive funding

on the same terms as housing associations. With access to grants of up to 90% of development costs, co-ops because an option for people with low income for the first time. The widest use of this government funding was in "short-life co-ops," developed as a means of legitimizing the unlawful, squatter occupation of vacant residential buildings owned by local council authorities that were slated for demolition or renovation. These par value cooperatives played a major role in providing temporary housing for single people and childless households in the 1970s and 1980s. Some have persisted to the present day.

The second stream of cooperative development in Britain has been the formation of tenant management cooperatives. Tenants handle the management and maintenance of their housing under contract to an existing landlord, mainly a municipal or nonprofit corporation, which retains ownership. Beginning in the early 1980s, tenant management cooperatives began taking over day-to-day responsibility for many publicly subsidized projects. In 1994, the conservative government introduced a statutory "Right to Manage" for council tenants, encouraging the formation of Tenant Management Organizations (TMOs). Since 1994, over 170,000 tenants in council housing have formed a TMO. The majority of these have been organized as cooperatives. A few have completed the transition from tenant management to tenant ownership, creating what is known in Britain as "common ownership cooperatives," resembling the par value cooperatives of the United States and Canada.[67]

The third stream of cooperative development is still in the planning stage. The New Economics Foundation and CDS Co-operatives, the largest cooperative housing service agency in London and the south of England, have begun promoting what they are calling a "mutual shared-equity co-operative." This model is an inventive blend of three models found in the United States: the community land trust, the limited equity cooperative, and the mutual housing association. As described in their seminal report, *Common Ground for Mutual Homeownership* (Conaty et al., 2003), this blended model contains eight elements.

*Community Land Trust (CLT).* A nonprofit company or charity will acquire and hold parcels of land, scattered throughout a specified geographic area, in order to ensure the permanent affordability of any housing (or other developments) located upon that land.

*Cooperatives.* Any number of separate cooperative housing societies will lease land from the CLT under a 99-year ground lease and will partner with the CLT to develop, own, and manage multiunit residential buildings. Each cooperative will have a membership made up of people who occupy the co-op's units and who own shares in the society.

*Rights of occupation.* Membership in the co-op and contractual possession of a "full repairing lease" will give rights of occupancy to individual members. This lease will allow for the assignment of equity and will entitle members to a Housing Benefit or Income Support in circumstances of unemployment or long-term ill health.

*Corporate mortgage finance.* The construction of new housing will be financed at low-cost rates comparable to the interest levels negotiated by registered social landlords, preferably on a low-start basis with payments weighted so that they are lower in the early stages and higher towards the end.

*Buy-in.* Members will pay an initial deposit set at 5% of a housing unit's cost, subject to review in later years in order to maintain affordability in relation to earnings.

*Equity buildup.* Members will build equity incrementally. Part of their monthly payments will be applied toward the acquisition of the units they occupy.

*Resale formula.* There will be a clear and transparent means of valuing equity stakes when a member wishes to leave the co-op and to resell his or her shares.

*Affordable and equitable housing payments.* Monthly carrying charges will be based on an affordable proportion of salary. Thus, a teacher with a salary of £23,000 per year, who pays 30% of her net income to the cooperative, will pay more per month and build equity at a faster rate than a health service worker earning a salary of £18,000 per year who is also paying 30% of her income in co-op carrying charges.

The report went on to recommend piloting this model in two rural areas and two urban areas: specifically North Devon, Stroud, East London and Milton Keynes. The City of London, in addition, has recently seized on

this model as a possible vehicle for redeveloping blighted areas that may serve as venues for the 2012 Olympics.

The most highly developed cooperative housing sector in the world is to be found in Sweden, where 15% of the nation's housing is owned and managed by "tenant-owner cooperatives."[68] The principal cooperative housing organization, the National Association of Tenants' Savings and Building Societies (HSB), was founded in 1923 at the initiative of the National Tenants Association. HSB combined a network of local tenant-owner associations with a network of regional savings societies, offering capital and technical assistance for the expansion of co-op housing and offering depositors who purchased co-op units preferential interest rates. A second cooperative association, Svenska Riksbyggen, was founded in 1940 by building trades unions at a time when 40% of their members were out of work. Riksbyggen focused on revitalizing the home construction industry by building cooperative housing as well as public housing.

Although both organizations managed to establish a national infrastructure for cooperative housing and to increase the amount of cooperatively owned housing to 4% of the nation's total stock of housing by 1942, their productivity was constrained by the central government's reluctance to intervene in the housing market. This changed when the Social Democrats came to power in the 1940s, heading a government that was committed to substantial state involvement in subsidizing – but not owning – nonmarket housing. Sweden embarked on a comprehensive program of state support for forms of production and forms of tenure where housing risks would be socialized and housing speculation would be eliminated. Housing owned by municipal and public utility enterprises and housing owned by limited equity cooperatives became the principal beneficiaries of this program. Privately owned rental housing became the principal loser, in part because no government funding was steered into this sector and in part because private landlordism was prohibited in larger buildings. As Skelton (2002: 18) points out:

> There is a connection between housing form and housing tenure in Sweden in that dwellings in multiple unit buildings cannot be individually owned (as in a condominium) so inner-city, multiple housing stock is rental or co-operative, and owner-occupied housing is all in single unit buildings.

Between 1945 and 1990, the proportion of the nation's housing stock in private rentals declined from 52% to 20%. During that same period, the proportion of housing controlled by municipal housing corporations rose from 6% to 25% and the proportion controlled by tenant-owner cooperatives rose from 4% to 15%. Owner-occupancy in single-unit buildings remained roughly the same, representing 38% to 40% of the nation's dwellings (Turner, 1997).

Sweden's cooperative housing sector is characterized by a nationwide, multilevel, organizational structure. At the local level, each building or cluster of buildings is owned and managed by a tenant-owner cooperative (TOC). Individual cooperators are members, tenants, and co-owners of their TOC. Individual members and the TOCs are themselves members of larger federations ("secondary cooperatives"), which are organized at the regional level.[69] Each of these secondary cooperatives is affiliated with the HSB, the Riksbyggen, or the Swedish Central Organization of Tenant-Owner Cooperatives (SBC). Each level receives technical, developmental, organizational, and, in the case of cooperatives affiliated with HSB, financial support from the level above. This structure of secondary and tertiary cooperatives means that no TOC is ever forced to go it alone when it comes to managing existing housing, developing new housing, training staff, resolving problems, or negotiating with private institutions or public agencies for financial support.

Until 1969, both HSB and Riksbyggen maintained a system of resale controls for the housing cooperatives affiliated with them. Prospective members had to be on the waiting list of a regional HSB or Riksbyggen society to be considered for a cooperative apartment. Departing members were not allowed to sell their shares for more than the member's initial payment plus the unit's pro rata share of the amortization occurring on the building's blanket mortgage during the member's occupancy.

Criticism of these price controls began to mount in the 1960s, however, with the predominantly middle-class membership of the TOCs demanding to be allowed to transfer their units for a market price. HSB and Riksbyggen managed to resist change until 1969, when they finally yielded and began permitting market-priced transfers of co-op units. By the mid-1980s, share prices in much of the country's cooperative housing were soaring. The result, as Conaty et al. (2003: 23) have noted, is that "low-income households were priced out, especially in central Stockholm and other big cities."[70]

The steady conversion of limited equity cooperatives into market-rate cooperatives has prompted HSB and Riksbyggen to develop more specialized housing for people being excluded or extruded from the older TOCs. Cooperatives have been created in recent years for the elderly and for young households, but HSB and Riksbyggen have been unable to reinstate price controls. There has also been some interest in developing rental co-ops for lower-income households, along the lines of England's tenant management cooperatives, backed by Sweden's network of secondary and tertiary cooperatives. Political support for this model has not been strong, however, leaving persons who are too poor to buy a co-op unit to look either to a diminishing stock of private rental housing or to an expanding stock of municipally owned rental housing.[71] Cooperative housing has moved increasingly beyond their financial reach.

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# A Regional Coalition for Housing (ARCH)

## Eastern King County, Washington

ARCH is a municipally funded, multi-jurisdictional agency serving a prosperous, high-growth area immediately to the east of Seattle. ARCH was created in 1992, when the City of Bellevue reached out to neighboring municipalities and suggested forming a regional organization to help smaller, suburban cities to cope with rising housing costs and the aggressive housing affordability targets being mandated by the state. The region surrounding Bellevue was experiencing rapid economic growth, driven by the expansion of Microsoft and a number of other employers, large and small. It was also becoming a very expensive place to live, with housing costs approaching the highest in the state. Meanwhile, countywide planning policies were calling for the cities in eastern King County to meet very high targets for housing affordability, as mandated by the state's Growth Management Act. Forty percent of the projected housing growth for each city was to be made affordable for low-income and moderate-income households. A Bellevue task force of public officials and private citizens, convened to explore ways of increasing the supply of affordable housing, concluded that this problem was too big for their small city to solve by itself. They recommended partnering with other jurisdictions to create a regional, interlocal housing agency. Their proposal found support in the chambers of commerce and the city councils of Bellevue, Redmond, and Kirkland. These three cities, joined by King County, became the founding members of "A Regional Coalition for Housing" (ARCH).

The coalition's membership today includes all 15 cities in eastern King County, in addition to the county government. None of these cities has a population larger than 100,000. Several have a population less than 10,000. Membership in ARCH is voluntary, as is the contribution that each municipality is expected to make toward meeting ARCH's annual operating costs and toward capitalizing ARCH's Housing Trust Fund. An informal "parity policy," created through consultation and negotiation with the planning directors and city councils of the member municipalities, establishes five-year funding goals for each member, ensuring proportional and continual support for ARCH's programs. According to ARCH's director, Arthur Sullivan, all members regularly exceed the minimum goals of this parity policy; the contributions of many come close to meeting the policy's high-end goals.

The centerpiece of the coalition's efforts is a regional Housing Trust Fund, administered by ARCH on behalf of its municipal members. Its disbursements subsidize the development of moderately priced homes in furtherance of the coalition's long-term goal of achieving "a geographic balance" of affordable housing throughout eastern King County. The trust fund's principal source of capital, during its early years, was the pass-through of federal Community Development Block Grant funds received by ARCH's members from HUD or the state. More recently, 11 of ARCH's cities have started contributing their own funds, raised locally. By 2004, ARCH's Housing Trust Fund had provided more than $19 million in assistance to more than 20 nonprofit and for-profit organizations, supporting the production or preservation of over 2000 affordable homes. Included in this total were newly constructed units, both rental and homeownership, with long-term restrictions over their occupancy and resale, and 400 units of project-based Section 8 housing that were purchased with the Trust Fund's assistance in order to maintain the availability and affordability of this rental housing for low-income households.

ARCH's special contribution to shared equity homeownership is not only that its Housing Trust Fund has frequently invested in such housing, but that ARCH itself is regularly entrusted by its municipal members with responsibility for monitoring and enforcing a standardized set of social controls perpetuating the affordability of homes that are scattered among multiple jurisdictions.

Although many of these homes have been developed with subsidies provided by the Housing Trust Fund, others have been created through the regulatory powers of ARCH's members, the result of either municipal mandates like inclusionary zoning or municipal incentives like density bonuses. When affordability is created by any of these means – and when a municipality is committed to maintaining affordability for many years – ARCH is authorized to act on the city's behalf.* ARCH advises the city on the number and pricing of the affordable units to be provided in a particular project by a particular developer. ARCH prepares the Developer's Agreement covering these units that is later executed between the city and the developer. If the project contains units for sale, ARCH prepares the Resale Agreement that is executed between the city and homebuyers at the time of purchase. ARCH administers both agreements, making sure that owner-occupied housing that is subsidized by the Housing Trust Fund or promised by a private developer is made affordable and kept affordable for persons of modest means.

The standardized contracts and covenants that are used by ARCH to control the eligibility, occupancy, and affordability of owner-occupied housing endure for 30 years. Most of this housing is reserved for households earning less than 80% of AMI, but ARCH's members sometimes set the eligibility for a particular project at a target that is higher or lower. Under ARCH's Resale Agreement, owners must occupy these homes as their "principal residence," although short-term subleasing is allowed under certain circumstances. During the 30-year affordability period, resale prices are set by an indexed formula that inflates the original purchase price by an average of the percentage increase in the AMI and the percentage increase in the average resale price of single-family houses and condominiums in eastern King County.† When a home is resold, ARCH must approve both the purchase price and the eligibility of the buyer. ARCH does not repurchase these homes itself, nor does it maintain a waiting list of prequalified, income-eligible buyers. All resales are directly from seller to buyer, with the buyer executing an assumption agreement, not a new covenant, when purchasing a resale-restricted home. At the end of 30 years, all controls over eligibility, occupancy, and affordability lapse. Whenever a home changes hands, however, in the first resale after these controls have lapsed, any proceeds over and above what the homeowner would have received under the restricted resale price are claimed by the city in which the housing is located and contributed back to the Housing Trust Fund.

ARCH's present portfolio of resale-restricted, owner-occupied housing is over 100 units, located in five different cities. That number will double in the next couple of years, as master plan commitments bring many more shared equity homes under ARCH's stewardship. ARCH sometimes administers affordability covenants for nonprofit organizations as well, including 30 resale-restricted homes built by a local chapter of Habitat for Humanity and 9 units of cooperative housing.

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* ARCH's authority to act on behalf of its member cities comes from the charter that created this interlocal agency and from letters issued by individual cities when ARCH is asked to act on the city's behalf in overseeing a particular project.

† The resale formula allows for the indexed price to be adjusted upward by the value of any structural improvements or appliance replacements paid for by the homeowner and to be adjusted downward by uncorrected deficiencies revealed in the property's inspection at the time of resale.

# Deed-Restricted Houses and Condominiums

## Boulder, Colorado

The City of Boulder has been promoting the production of affordable, deed-restricted, owner-occupied housing for 20 years through a succession of growth management and inclusionary zoning ordinances. Early versions of these municipal measures required short-term controls over the use and resale of any homes produced. After losing many of these homes to the market, as their affordability controls expired, the City changed its policy. Since 2000, all owner-occupied houses and condominiums created through the city's inclusionary housing program must "remain affordable forever to households earning no more than the HUD low income limit for the Boulder Primary Metropolitan Statistical Area." The City is aggressively pursuing a goal of eventually ensuring that 10% of Boulder's entire housing stock is permanently affordable to low-income families.

Boulder is a home-rule city of 103,216 people, located 27 miles northwest of Denver at the foot of the Rocky Mountains. It is the county seat of Boulder County and home to the University of Colorado. Its economy is based on the university, federal laboratories, regional business, banking, and medical services, and a thriving high tech industry. The city's population grew from 25,000 to 37,000 in the 1950s and then nearly doubled during the next decade, reaching 66,000 by 1970. Such rapid growth was accompanied by increased development outside the city limits. Before sprawl could gain momentum, however, the city and county created the Boulder Valley Comprehensive Plan. Adopted in 1970 and refined in 1978, this plan defined an urban growth boundary, preventing the city from extending water and sewer services outside of the city's "service area" and preventing the county from approving new subdivisions needing urban services and facilities.

The 1978 plan helped to direct investment toward infill development and the redevelopment of underutilized areas inside the city, capitalizing on existing infrastructure. It protected the city against sprawl just beyond its boundaries that would have put demands on city services without allowing the city to collect taxes to fund those services. It protected rural land uses and sensitive environmental areas throughout the county. It also raised concerns, however, about the impact that growth management might have on the availability and affordability of housing inside the growth boundary, so Boulder added a housing component to its land use regulations. All new residential development on land annexed to the city after December 1973 was required to include a 15% set-aside of units affordable to moderate income households or a 7.5% set-aside of units affordable to low-income households. (Lower set-asides were required for development on land annexed to the city prior to December 1973.) Resale restrictions on the moderate-income units were required to last only ten years. Resale restrictions on the low-income units were required to last only five years.

Inclusionary housing was adopted as a supplement to growth management in 2000. Boulder's inclusionary zoning ordinance mandates that 20% of the units in any newly constructed residential project of five units or more must be made initially affordable – and kept permanently affordable – for households earning less than the HUD low-income limit – defined as the lesser of 80% of median income for Boulder or 100% of the national median income, adjusted for household size. Boulder's ordinance also gives developers the option of providing permanently affordable units off-site, dedicating land for the development of permanently affordable housing, or making an in-lieu-of-production cash contribution to the City's housing trust fund. A developer may buy out one-half of his inclusionary obligation at a cost of approximately $100,000 per unit. He may buy out the second half of his obligation at a cost of approximately $150,000 per unit.

Inclusionary zoning covers both rental housing and homeowner housing. When developers are constructing rental housing, they must sell their inclusionary units to the Boulder Housing Authority or to a nonprofit housing organization. When developers are constructing homeowner housing, they must wait on city staff to find income-eligible buyers for their inclusionary units. On four occasions, however, developers have been allowed to pre-sell inclusionary units to Thistle Community Housing, a community land trust that is the county's largest nonprofit developer of affordable housing. This has been a boon to all parties. The developer's risk is reduced, because 20% of the project is pre-sold before ever breaking ground. Thistle's risk is reduced, because it is not holding land or constructing houses, but accepting units at completion on a turn-key basis. The price to the homebuyers is reduced, because Thistle is usually able to negotiate a lower sales price from the developer – generally 5%-9% lower than the city-mandated inclusionary price – because of Thistle's contractual commitment to purchase and market all of the developer's inclusionary units.

The name given by Boulder to the homeownership side of its inclusionary housing program is HomeWorks. Every HomeWorks property is encumbered with a "Permanently Affordable Housing Covenant," requiring homeowners to occupy the property as their primary residence and restricting the property's resale price. This affordability covenant is supplemented by a Deed of Trust, naming the City as the mortgagee. Homeowners cannot transfer, finance, or refinance their properties without the City being notified and without the City granting its approval.

The covenant gives the City the first option to purchase every HomeWorks property for a formula-determined price or to assign that right to someone else. If the City does not exercise its option, the homeowner must still sell the property for the formula-determined price to another income-eligible household. The resale price is determined by adding to the price initially paid by the homeowner the following elements: (a) customary closing costs and costs of sale; (b) costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Boulder County; and (c) an inflationary factor applied to the original purchase price, either the percentage change in the Area Median Income or the percentage change in the Consumer Price Index, whichever is less, although both are capped at no more than 3.5% per year. The owner may also receive a credit for capital improvements made to the home during his or her occupancy if those improvements appear on the list of approved capital improvements published by the City. Each year, every owner of a resale-restricted home receives a letter from the City of Boulder disclosing what the maximum allowable resale price of the property would be, if the owner were to sell his or her home that year.

As of December 2005, the City of Boulder was overseeing 470 units of permanently affordable, owner-occupied housing, a portfolio that is now growing at a rate of roughly 50 new homes per year. An extensive administrative system has been put in place to ensure that these properties are marketed in accordance with fair housing laws and are initially sold and continually resold for prices affordable to low-income homebuyers. Administrative responsibilities are divided among three sets of municipal staff.

*Developer compliance.* Housing planners monitor the performance of residential developers in meeting their inclusionary obligations, ensuring that inclusionary units are made available in the number, on the schedule, and at the size and price required by Boulder's ordinance.

*Marketing and resales.* Municipal staff, working under the Homeownership Programs Manager, monitor the sale and resale of HomeWorks properties: verifying the eligibility of prospective buyers, calculating the formula-determined price, overseeing the marketing of HomeWorks properties, and running the lottery through which all HomeWorks properties are sold – or resold.

*Asset management.* Municipal staff, working under the Asset Manager, monitor and enforce the homeowners' compliance with the occupancy and affordability controls that encumber their properties. These responsibilities include oversight of owner-initiated capital improvements, oversight of refinancing, and the preparation of annual compliance letters confirming owner-occupancy of HomeWorks properties and annual

notices informing homeowners of the maximum allowable resale price of their properties.

As a result of the City's diligence and efficiency in watching over this portfolio of resale-restricted housing, no HomeWorks property has ever been lost to the market. Every property is still owner-occupied. Every property is still affordable.

# Homes for Good

## Massachusetts Nonprofit Housing Association
## Springfield, Massachusetts

The Homes for Good program is a statewide initiative of nine regional organizations making up the Massachusetts Nonprofit Housing Association. Through a multiyear contract with the Massachusetts Department of Housing and Community Development (DHCD), the Association's members monitor and enforce the deed covenants on over 3,000 owner-occupied houses, townhouses, and condominiums that were originally developed with state resources. The goal of Homes for Good is to ensure that this publicly assisted, privately owned housing is kept permanently affordable for first-time homebuyers earning less than 80% of Area Median Income.

The resale-restricted homes for which the regional nonprofits are responsible were created under two programs administered by DHCD: the Homeownership Opportunity Program (HOP) and the Local Initiative Program (LIP). Low-income households were able to afford the purchase of HOP units because of a combination of state grants, low-interest loans, and developers' concessions. LIP units, by contrast, were made affordable to low-income households through comprehensive permitting and inclusionary exactions authorized under Chapter 40B, the state's "anti-snob zoning" law.* A 99-year affordability covenant, prepared by DHCD, encumbers the owner-occupied housing created through both programs. For HOP housing, DHCD holds the right to purchase these homes at resale for a formula-determined price and to identify income-eligible buyers. For LIP housing, the right to repurchase is held by both DHCD and the city or town in which the home is located.

In 2004, as the number of HOP and LIP units under DHCD's stewardship was approaching 3,000, DHCD issued a Request for Proposals seeking someone other than a state agency to assume responsibility for monitoring the covenants and managing the resales for these deed-restricted homes. The principal tasks which DHCD sought to delegate were the following:

- Research and record all active HOP and LIP units by region, sales price, owner of record, and other program data using client information provided by DHCD.
- Establish a data base and web site to provide a clearinghouse for available units.
- Facilitate all aspects of the resale process with the seller and the buyer.
- Maintain regional lists of income-eligible families interested in purchasing affordable units.
- Determine the legal Maximum Resale Price for each resale, as defined in the covenant.
- Market the resold units to income-eligible homebuyers.
- Maintain a database of prospective homebuyers and provide ongoing outreach to real estate professionals, sellers, and public officials.
- Develop and maintain an annual compliance notice system for existing homeowners.

The covenant attached to the deeds of HOP and LIP homes restricts their current use and future resale. These homes must be continuously occupied as the owner's primary residence, although subletting may be allowed under extraordinary circumstances. On resale, the

* Chapter 40B gave a statewide Housing Appeals Committee the power to override local zoning boards in cases where communities with little subsidized housing reject an application from a developer to construct such housing. Developers may pursue this remedy in any town where less than 10% of the year-round housing stock is made up of units affordable to low- and moderate-income households or where less than 1.5% of the town's buildable land is already developed for subsidized housing. Since 1969, nearly 30,000 housing units in more than 200 communities have been built using the provisions of Chapter 40B.

homes must be sold for no more than a maximum formula-determined price to households earning under 80% of AMI. Until recently, the formula governing these resales was based on a "discount rate," established at the time of initial sale as the ratio of the property's purchase price over the property's appraised value. The maximum resale price was calculated by multiplying the property's appraised value at the time of resale by the original "discount rate." After mounting evidence that this resale formula was failing to maintain the affordability of HOP and LIP housing in the state's hottest real estate markets, DHCD began incorporating a new resale formula into its deed covenants. For the past three years, DHCD has used an indexed formula pegged to changes in area median income. As new resale-restricted homes are completed and as older resale-restricted homes are resold, the indexed formula is added to the covenant.

Newly constructed LIP homes are marketed through a lottery conducted by the nonprofit organization responsible for administering Homes for Good in a particular region. (HOP has been discontinued, so no new HOP housing is being built.) Older LIP and HOP homes are resold to income-eligible households who are prequalified for mortgages and placed on a waiting list maintained by the regional nonprofit. Homebuyers are selected off the waiting list in the order in which their applications are received, although consideration is given to matching unit size with household size. Local preferences may figure into the selection of homebuyers for LIP units. For example, a town may have insisted, as a condition of approving a new residential project in which 20% of the units were set aside for low-income households, that priority be given in selling these below-market units to households who already live or work in the town. When these units are resold, the regional nonprofit will take such local preferences into account, balanced against the demands of fair housing.

The Massachusetts Nonprofit Housing Association was granted $250,000 by DHCD and awarded a three-year contract to establish this statewide system for monitoring and enforcing affordability covenants imposed by DHCD. When this contract ends on June 30, 2007, DHCD has the option of extending it for an additional two years. The ongoing cost of operating the Homes for Good program is covered, in part, by payments from the state that are tied to the number of deed-restricted homes that are resold. For each resold home, the Association receives a fee from DHCD that is equivalent to 4% of the price that is paid to the property's owner on resale. Three-quarters of this payment goes to the regional nonprofit that has monitored, brokered, and managed the transfer from one income-eligible homeowner to another. The other quarter is retained by the Association to defray its cost of staffing and coordinating Homes for Good.

Only some of the thousands of units of resale-restricted, owner-occupied housing being created with public subsidies or through public mandates in Massachusetts have been placed under the stewardship of Homes for Good. For example, many more resale-restricted homes are currently being created through subsidies provided through the Massachusetts Housing Finance Agency (now called MassHousing) than through the LIP program. MassHousing and other public and nonprofit entities developing resale-restricted housing may eventually decide, like DHCD, to delegate the tasks of monitoring and enforcing their durable deed covenants to the Massachusetts Nonprofit Housing Association. That decision will depend on a future performance evaluation of the statewide system pioneered by Homes for Good.

# Sawmill Community Land Trust

## Albuquerque, New Mexico

The Sawmill Community Land Trust grew out of a long history of community organizing. It was founded in 1997 by the Sawmill Advisory Council (SAC), a grassroots group of neighborhood residents formed ten years earlier to stop pollution from a nearby particleboard factory. SAC's focus quickly broadened to encompass not only concerns about the quality of the neighborhood's environment but concerns about the affordability of the neighborhood's housing. One of the oldest Hispanic neighborhoods in Albuquerque and one of the city's most affordable places to live, Sawmill is located within walking distance of the downtown business district. It is adjacent to the historic Old Town area, one of New Mexico's biggest tourist attractions. In the early 1990s, Sawmill began to experience a wave of public and private investment, including construction of two new museums, development of a 60,000-square-foot commercial and retail plaza, the conversion of two former industrial sites into wholesale businesses, expansion of an existing hotel convention complex, construction of luxury condominiums, and the encroachment of law offices, salons, and upscale businesses into residential blocks once dominated by affordable, single-family houses. This economic activity caused real estate values throughout the Sawmill neighborhood to spiral upwards, pushing land and housing costs beyond the reach of families who had lived there for decades.

Growing alarmed at the pace of speculation and gentrification, SAC created its own community development corporation to exert a modicum of community control over the investment flowing into its neighborhood. As the Sawmill CDC was undertaking its first project, the construction of seven units of affordable, infill housing, SAC learned that 27 acres of vacant land was going up for sale near the same particleboard factory that the community had been fighting for years. Fearing that the factory would expand if it could acquire this parcel, SAC convinced the city to buy the land with the understanding that SAC would be consulted on any future development planned for the site.

As the city plodded through a multiyear process of rezoning the site to allow for residential and commercial development, SAC's leaders came gradually to believe that the only way the Sawmill community could be absolutely sure that whatever was developed there would actually benefit long-time, lower-income residents was for the community itself to own the land, guide its development, and control its use. A community land trust seemed the best way to secure such control. The bylaws of the Sawmill CDC were amended, therefore, to convert the corporation into a CLT. After a community-based process of preparing a master plan for the site's development and after months of negotiations between SAC and city officials over the details of a development agreement, the City of Albuquerque eventually conveyed title to all 27 acres to the Sawmill CLT. (Should the SCLT fail to develop the site or to meet the conditions in its development agreement – or should the SCLT eventually dissolve – ownership of the land would revert to the city.)

The Sawmill CLT adopted seven goals for redeveloping this inner-city site:

- Create a permanent reserve of affordable housing for families at or below 80% of AMI.
- Create a built environment that retains its physical integrity for future generations and preserves the natural attributes of the land and the cultural history of the community.
- Create commercial and industrial space that benefits the community with job creation and needed services.
- Blend the "old" and "new" into one unified neighborhood.

- Avoid negative impacts from new development on the existing residents.
- Empower residents to make decisions about their future.
- Ensure ecological sensitivity and energy efficiency.

SCLT's master plan for Arbolera de Vida (the Orchard of Life) includes housing, a park, a plaza, a community center, offices, retail space, senior apartments, and live/work spaces for home businesses. The construction of these improvements, all to be located on 99-year leaseholds administered by SCLT, is occurring in three phases:

*Phase I* consisted of 23 single-family homes and a neighborhood plaza. Another 3 houses were built across the street from the original 27-acre parcel. The construction and marketing of these first homes were completed in 2001. At purchase prices ranging from $54,700 to $125,000, many of these homes were sold to households earning under 60% of Area Median Income.

*Phase II* will add another 127 units of housing. Sawmill first had to relocate a railroad track running through the site and to develop an extensive residential infrastructure. These costly and time-consuming tasks have now been completed. Construction of Phase IIA, which includes a mix of 4 detached houses, 12 townhouses, 10 casitas, and 4 live/work units began in April 2006, with completion slated for October. Another 60 live/work rental spaces designed for artists were completed in June 2006. Phase IIB will begin construction next year, adding 37 houses and townhouses, 20–40 apartments for seniors, and 18–25 live/work condominiums. Community amenities will include a bike path, walking trails, and a one-acre park.

*Phase III* will add commercial/industrial sites, a community center, and a neighborhood park. There are also plans for a community orchard, a community garden, and a child care center.

All of the owner-occupied housing at Arbolera de Vida is covered by occupancy and resale controls contained in the SCLT's ground lease. These controls are designed to prevent absentee ownership and to preserve the continuing affordability of this housing for future homebuyers earning below 80% of AMI. Departing homeowners must resell their homes to the SCLT or to another income-eligible buyer for a formula-determined price, equivalent to what they originally paid in purchasing the home plus 25% of the difference between the home's appraised value at the time of purchase and the home's appraised value at the time of resale.

In 2004, the SCLT purchased the particleboard manufacturing plant adjacent to Sawmill's original 27-acre site. This 7.3-acre industrial site is being redeveloped for commercial and residential uses in partnership with a for-profit developer. Approximately 20% of the residential units in this development will be maintained as resale-restricted housing, utilizing the community land trust model.

Inherent to the success of the Sawmill Community Land Trust is the active participation of two groups of members: residents of housing located on SCLT's land (leaseholder members) and residents of the neighborhood surrounding Arbolera de Vida (general members). Each group nominates one-third of SCLT's board. The final third is nominated by the board itself. All directors are then elected by the full membership.

Within the next few years, SCLT plans to expand into the inner-city neighborhoods next to Sawmill, strengthening its membership base while seeking new opportunities for development. To this end, SCLT's six-person staff has been dividing its time over the past two years between overseeing the construction of Arbolera de Vida and working with groups in adjoining areas to design and implement the "Sawmill Metropolitan Redevelopment Area Plan."

# Time of Jubilee Community Land Trust

## Syracuse, New York

The Time of Jubilee Community Land Trust traces its origins to the early 1980s when two associations of clergy, the Interdenominational Ministerial Alliance and the Downtown Clergy, were challenged by IMA's president, Reverend Larry Howard, to become more actively involved in addressing the problems of an impoverished inner-city section of southwest Syracuse. This was a heavily blighted, thoroughly disinvested neighborhood. Most of its housing was dilapidated and absentee-owned. Few homeowners remained. Crime was an everyday occurrence. The local park was a hang-out for drug dealers and prostitutes.

While the two ministerial associations were still considering the challenge laid down by Reverend Howard, they were approached by municipal officials and asked to partner with the city's Community Development Department in developing a 12.5-acre parcel of vacant, city-owned land in the same neighborhood. These officials were interested in seeing affordable, single-family homes developed on the site. They were also hoping the clergy's involvement in this initial project might lead to a deeper commitment to southwest Syracuse, along the lines of the Nehemiah Project in New York City.

The Nehemiah Project had gotten local churches involved in revitalizing an eight-square-block area in the burned-out Brownsville section of Brooklyn. After paying a visit to this project, leaders of the two ministerial associations in Syracuse were ready to try something similar in the southwest section of their own city. They realized they would need a new organizational vehicle, however, if they were to become involved in the construction of affordable housing and other community development activities. Taking the long view, they also anticipated a day when their own efforts might trigger a process of reinvestment and gentrification that could push housing costs beyond what the neighborhood's current residents could afford. The vehicle chosen by the clergy was a community land trust, Time of Jubilee, Inc., formed with their support in 1984. The clergy were drawn to the CLT because they believed this model to be the best means for accomplishing four objectives:

- Owning land permanently for the benefit of a local community.
- Providing access to land and housing at affordable prices.
- Keeping those prices affordable for future users.
- Preserving and recycling the value of public subsidies within the community to achieve greater impact from limited funds.

The clergy proposed a partnership between the City of Syracuse and Time of Jubilee for the near-term development of the city-owned site and for the long-term revitalization of southwest Syracuse. To facilitate this partnership, a development corporation, Jubilee Homes of Syracuse Inc., was established in 1986, under the joint control of Time of Jubilee and the City of Syracuse. Jubilee Homes would play the role of developer, constructing and marketing single-family homes to lower-income families that were heavily subsidized by grants from the City of Syracuse and the New York State Affordable Housing Program. Once the houses were sold, the underlying land would be turned over to Time of Jubilee, which would serve as the long-term steward for the community's land, the city's subsidies, and the housing's affordability.

Progress was slow for the first several years. Much time was spent persuading bankers who were unfamiliar with the CLT model to provide mortgage financing for limited-equity homes on leased land. There was also the difficulty of finding local families who were able to qualify for mortgages and who wanted to buy homes in a blighted neighborhood still years away from being

turned around. Nevertheless, by 1992, Jubilee Homes had constructed and sold its first 26 houses. These first homes were a split-level design, providing 1900 square feet of space, three finished bedrooms, a fourth unfinished bedroom, 1.5 baths, and a garage. Their subsidized price to a low-income homebuyer was $66,500. Another 60 single-family homes were built and sold by Jubilee Homes over the next decade, filling out the original site received from the city and spreading onto vacant lots surrounding this core area.

In recent years, Jubilee Homes has expanded its redevelopment activities beyond the construction and sale of single-family homes. Although continuing to build five new houses a year, Jubilee Homes has also been using HOME funds to acquire and renovate vacant single-family houses and duplexes. These dwellings are rented to low-income households who are prepared for homeownership over a 6-month to 2-year period through a program of credit counseling, debt restructuring, and homebuyer education. Under a lease-to-purchase arrangement, these households eventually secure ownership of their homes and sign a long-term lease for the underlying land with Time of Jubilee.

Unlike other housing developers whose involvement with the home buyer ends at the time of sale, Jubilee Homes and the Time of Jubilee have made a long-term commitment to the neighborhood and a lifetime commitment to the homeowners who live on the CLT's land. The relationship that is forged when potential homebuyers are helped through the process of buying a CLT home is continued after the sale. To assure that first-time homeowners can meet the demands of owning and maintaining their homes, Jubilee Homes, Hechinger's, H.O.M.E. Headquarters, M&T Bank and the City of Syracuse have teamed up to develop "The Handy Homeowner Course." This four-week training program is designed to give low- and moderate-income homeowners the skills and knowledge necessary to be successful in their new homes. The continuing relationship between the CLT and its leaseholders is seen, as well, in the assistance rendered by Time of Jubilee if homeowners get behind in their mortgage payments or when homeowners decide to resell their homes. Mortgage lenders notify the CLT if leaseholders are in arrears. Time of Jubilee then intervenes to address the problem and to prevent foreclosure. Time of Jubilee also manages the resale of CLT homes, marketing them to other income-eligible households and ensuring that these homes change hands at an affordable price.

In recent years, Jubilee Homes has added a Business Resource Center to its menu of services. Part of the City's Empowerment Zone initiative, this program provides education, training, and development assistance to small-sized, minority- and women-owned businesses in southwest Syracuse.

The organization's impact on its target neighborhood has been dramatic. Where there were once vacant, overgrown lots collecting trash, there are now nearly a hundred newly-constructed and newly-renovated owner-occupied homes amidst freshly mown lawns. The City has installed new sidewalks and redeveloped the local park. Families, private lenders, and small-scale entrepreneurs are buying homes, securing mortgages, and starting businesses in an area with a history of disinvestment and neglect. The revitalization of southwest Syracuse still has a long way to go, but the 20-year partnership of Time of Jubilee, Jubilee Homes, and the City of Syracuse has helped the neighborhood to take its first steps toward recovery.

# Burlington Community Land Trust

## Burlington, Vermont

The Burlington Community Land Trust (BCLT) is one of the oldest and largest CLTs in the United States. It was created in 1984 at the instigation of an activist municipal government that had grown increasingly concerned about the rising cost of housing throughout the city and the rising threat of displacement in the residential neighborhoods surrounding Burlington's central business district.

The organization's original service area included all of Burlington. The BCLT pursued any opportunity within Burlington's city limits for the acquisition of buildable land, the rehabilitation of existing housing, or the construction of new housing. Within this citywide service area, the BCLT defined a much smaller target area, the Old North End, where it concentrated its efforts for neighborhood preservation and improvement. Here, in Burlington's most impoverished neighborhood, the BCLT committed itself not only to building affordable housing but to rebuilding a lower-income community – without displacing its lower-income residents. Whereas the development of owner-occupied housing was the BCLT's highest priority in other parts of the city, in the Old North End, the BCLT acquired and rehabilitated rental housing as well. It also redeveloped a brownfield site, created two vest-pocket parks, and developed 76,137 square feet of commercial space in seven different buildings, leasing this space to local nonprofits providing health care, day care, senior services, legal aid, homeless assistance, and other essential services to residents of the Old North End.

In 1990, the BCLT began developing affordable housing throughout Chittenden County. The BCLT's decision to embrace a countywide service area was done in recognition of the fact that Burlington's housing market and its housing problems are regional in nature. To have maximum impact – increasing the supply of low-cost housing, promoting the mobility of lower-income people, and introducing "fair share" to communities whose doors had long been closed to affordable housing – the BCLT needed to operate not only in the inner-city neighborhoods of Burlington, but in the surrounding suburbs as well. In 2001, the BCLT expanded its service area yet again. Partnering with another nonprofit organization, the Lake Champlain Housing Development Corporation, the BCLT opened a homeownership center in St. Albans, 30 miles to the north of Burlington, to provide homebuyer counseling for lower-income households in Franklin and Grand Isle Counties.

Political and economic conditions favored the BCLT's early growth. Throughout the 1980s and 1990s, the organization enjoyed the steady support of a municipal government whose housing policy was founded on the twin pillars of encouraging the nonprofit production of affordable housing and ensuring the perpetual affordability of any housing produced using subsidies provided by the public.* A similar policy guided public spending for affordable housing by the State of Vermont. The BCLT and other housing and conservation land trusts were given a special boost in 1987 by the state's creation of the Vermont Housing and Conservation Board (VHCB). The enabling legislation that established this quasi-public entity contained a statutory priority for investing in projects that "prevent the loss of subsidized housing and will be of perpetual duration."† VHCB has been a major source of project equity and operating support for the BCLT and Vermont's five other CLTs.

* A more detailed description of Burlington's housing policies during this period can be found in Davis (1994).

† 10 VSA chapter 15, section 322. For more on VHCB, see Libby and Bradley (2000).

With the support of VHCB, with discretionary funds provided through federal programs like HOME and CDBG, with monies received from Burlington's Housing Trust Fund, and with low-interest financing from the Vermont Housing Finance Agency and the Burlington Employee Retirement System, the BCLT has assembled a diverse portfolio of resale-restricted, owner-occupied housing, including 144 detached houses, 6 duplex units, 230 condominiums, and 125 cooperative units in six different LECs. Nearly half of the BCLT's limited equity condominiums were acquired at below-market prices through Burlington's inclusionary housing program. The BCLT is one of four "designated housing agencies" to which the City may assign its option to purchase any units created through inclusionary zoning. The BCLT's obligation, when assigned this option, is to maintain the affordability of any inclusionary homes that come into its portfolio for a period of 99 years.

The BCLT has also developed 384 rentals, plus transitional housing and residential facilities for persons with special needs. Many of these apartments are in rehabilitated 3-unit and 4-unit buildings that are over fifty years old, although several larger, multiunit rental projects have been newly constructed. Ownership of most of this rental housing is divided among a dozen different tax credit partnerships in which the BCLT is both a general partner and the property manager.

In form and function, the BCLT follows the basic blueprint of the "classic" community land trust. The BCLT never resells its land, but provides for the exclusive use of its land through ground leasing. Its ground lease has a duration of twenty years, but is renewable "at the sole discretion of the Lessee for as long as the grass grows and the water runs." A new lease is executed and recorded every time ownership of a building located on the BCLT's land changes hands. All of the BCLT's single-family houses, duplexes, and cooperatives are located on leased land. The BCLT's first condominiums were located on leased land, as well, but because later condominiums came into the BCLT's hands through inclusionary zoning or negotiated agreements with private developers, where acquisition of the land by the BCLT was never part of the deal, ground leasing proved impractical. The occupancy, eligibility, and affordability of these units are protected, instead, through state-sanctioned affordability covenants, attached to each condominium's deed.

The BCLT retains a preemptive option to repurchase any residential structures located on its land and any condominium units for which it holds an affordability covenant. The resale price is set by a formula contained in the ground lease or the covenant, allowing departing homeowners to recoup their original downpayment, any equity earned by paying off their mortgage, and the value of any pre-approved capital improvements made by the homeowners. In addition, if homes appreciate in value between the time of purchase and the time of resale, their owners are granted 25% of that appreciation. Eligibility to purchase a BCLT home, whether on initial sale or on resale, is limited to households earning below 100% of Area Median Income. Most of the BCLT's homebuyers earn much less than 80% of AMI, however.

BCLT presently has a staff of 35 employees, total assets of $26.8 million, and an annual budget of $1.8 million. Its 2400 members elect the BCLT's twelve-person board, which conforms to the three-part structure of the classic CLT. One third represents the interests of people who live in BCLT housing. One third represents the interests of people living in the BCLT's three-county service area who do not live in BCLT housing. One third is made up of individuals representing the broader public interest.

The BCLT is presently negotiating a merger of equals with the Lake Champlain Housing Development Corporation, a local nonprofit that manages a rental housing portfolio of over 1200 units. The merged entity will continue to be structured and operated as a community land trust. When the merger is completed in October 2006, the BCLT will change its name to the Champlain Housing Trust.

# Beecher Cooperative

## Washington, DC

On Christmas Eve, 1977, every tenant in the ten buildings of a 96-unit complex in the Glover Park neighborhood of Northwest Washington, DC, received a hand-delivered notice to vacate their homes within 90 days.* The owners had decided to convert the site to condominiums, hoping to profit from rising real estate values in this wooded neighborhood located near Georgetown University and American University. Apparently, the owners were also trying to beat the enactment of a municipal ordinance being considered by the District council that would soon give tenants the first right to purchase rental properties slated for conversion.

These garden apartments, located at 41st and Beecher Streets, had been originally constructed to house military personnel coming into Washington during World War II. They were now occupied by families and individuals of modest means, almost none of whom could afford to purchase a high-priced condominium. Facing the imminent loss of their homes, the tenants organized themselves into the Beecher Low-Rise Tenants Association to resist eviction. With the encouragement and support of members of the District council and city staff from the mayor's office, the Tenants Association managed to slow down the eviction process, take over management of the property, and open negotiations with the owners about the possibility of buying and operating the property as a limited equity cooperative.

The tenants' dream finally came true in 1979. The Beecher Cooperative succeeded in buying six of the ten buildings, 63 apartments in all, through a limited partnership. As part of the purchase plan, every apartment underwent a major structural rehabilitation, including the installation of a new kitchen. The cost to each resident of buying a share in this newly formed cooperative was $1,000. No one was displaced. (Four buildings, containing 33 apartments, were retained by the site's original owners and were eventually converted into condominiums. One of these condominiums is currently on the market for $324,900.)

The next major change in the life cycle of this fledgling cooperative occurred in 1986, when the resident members bought out the limited partnership that was co-owner of their six buildings. Under a seven-year lease-to-purchase agreement negotiated in 1979, the residents were forced either to raise $2.5 million to buy out the limited partnership or to face their own displacement once again. This capital was assembled through individual share loans of $27,900-$32,000 from the National Cooperative Bank taken out by the cooperative's members. When the monthly cost of servicing these share loans was added to a member's monthly carrying charges for heat, repairs, insurance, and other costs of operating the Beecher Cooperative, members were paying between $575 and $625 a month for their housing – a cost that has barely increased since 1987. In the same neighborhood, one-bedroom apartments are now renting for $1,400 a month. Single-family houses are selling for $900,000.

Although modest in comparison with the market-rate prices found in the rest of the neighborhood's housing, the monthly cost of a co-op apartment would exclude most low-income households from living at the Beecher Cooperative. The door is kept open, however, by the presence of 18 project-based subsidies for households earning less than 60% of AMI. In its early years, the cooperative also became home to several graduates of the Green Door, a program helping persons with mental

* This profile of the Beecher Cooperative is based on a November 2005 interview with Nancy Rowand, one of the cooperative's original members and the long-time site manager. It also draws on a story that appeared in the 1999 newsletter of the National Association of Housing Cooperatives, celebrating Beecher's 20th anniversary.

disabilities to reenter society from halfway houses. Persons with disabilities are still housed and still welcomed by the cooperative.

There are restrictions on the use and resale of these cooperative apartments. Members must occupy apartments as their primary residence. Subletting is tightly regulated. Absentee ownership is discouraged. To maintain affordability, the resale price of individual shares is capped, not to exceed the rate of increase in the Consumer Price Index. Affordability is also protected by capable management of the cooperative's resources, especially in building substantial operating and replacement reserves. Members have never been hit with special assessments for extraordinary expenses.

Over the years, some members have occasionally floated the idea of transforming Beecher from a limited equity cooperative into a market-rate cooperative. Removing the price limitation on members' shares, however, requires a super majority of the membership voting to amend the cooperative's Articles and Bylaws. There has never been much support for such a move. "That idea gets shut down pretty quickly," according to Nancy Rowand, the cooperative's site manger. "We were diverse originally. We are committed to remaining affordable and diverse. We have different ages, ethnicities, races, and incomes. We are much more diverse than the surrounding neighborhood. At least a dozen different countries of origin are represented here. We're proud we're affordable. People know coming in what the deal is. If they want a big return, they can look elsewhere."

The Beecher Cooperative is self-managed. A single full-time employee, the site manager, oversees the bookkeeping and payment of bills, collects the members' monthly carrying charges, commissions the annual audit, maintains the waiting list, and hires contractors for major improvements or repairs, as needed. She is supervised by a 7-person board of directors elected by the resident members. Most of the work of maintaining the cooperative's buildings and beautifying its grounds was once done by the members themselves. Today, these chores are predominantly done by part-time help and hired contractors. Member participation in the cooperative's operations is generally lower than in the days when the co-op was getting started and when, as the site manager says, "members had more time than money." Members still regularly lend a hand, however. "Whenever we need volunteers, it seems like the right people are always here. Any time we've come to a crossroads, we've had dedicated boards and people with knowledge who have stepped forward to help."

Stability is high in this tight-knit community. Turnover is low. Only two or three apartments change hands within a typical year. Half-a-dozen are still occupied by members who lived there as tenants in 1977 and helped to organize the Beecher Cooperative. Departing members are responsible for marketing their apartments and selling their shares. This has usually been a pretty quick and easy process. Despite the smallness of the cooperative's apartments, which average only 550 square feet in size, they have always been in high demand. Their relative affordability and favorable location, combined with the cooperative's well-deserved reputation for inclusiveness and community spirit, have made the formal marketing of available apartments unnecessary. At any one time, there are dozens of households on the cooperative's waiting list – prospective homebuyers of modest means who are hoping for the chance to purchase a share in one of Washington, DC's most successful residential communities.

# Hermitage Manor Cooperative

## Chicago, Illinois

The Hermitage Manor Cooperative is located a mile-and-a-half west of Chicago's central business district in a neighborhood that is rapidly gentrifying. Nearby, a public park has been refurbished; vacant factories are being converted into luxury condominiums; new businesses are being opened; new construction is filling up recently cleared sites; and people with more money and lighter skins are appearing on sidewalks they would have assiduously avoided five years ago. Amidst these many changes, Hermitage Manor has remained an oasis of stability and affordability. In an area undergoing a significant turnover in population, a majority of the 108 households at Hermitage Manor have lived there for more than ten years; a third of the cooperative's townhouses are occupied by the same households who were living there in 1971 when the cooperative took over ownership and control from the original developer. In an area where newly constructed condominiums are currently selling for $500,000 and where the fair market rent for a 3-bedroom apartment is $1,114 a month, the cost of buying a member share in Hermitage Manor is approximately $1,800, with a monthly carrying charge of $555 for a three-bedroom townhouse.

Hermitage Manor was the third limited equity housing cooperative built in Chicago using a federally insured below-market interest rate mortgage provided under Section 221(d)(3) of the National Housing Act. Construction of the community's 17 buildings, containing 108 townhouses, was completed in 1969. The resident-controlled cooperative that took title to the property two years later has successfully owned and operated Hermitage Manor ever since. A five-person board, elected by the residents, establishes policies and rules for the cooperative's operation and hires, evaluates, and occasionally replaces the cooperative's property management company. The board has also played the leading role, during the current year, in negotiating a $4.5 million private loan that will be used to pay off the balance of the cooperative's HUD mortgage and to replace roofs, refurbish bathrooms, finish off basements, and complete other capital improvements that will enhance the livability and extend the life of Hermitage Manor.

Though its mission today is focused mainly on preserving the stability and affordability of family housing in a neighborhood undergoing speculative reinvestment, the cooperative's original purpose was quite different. It was built to prevent the further deterioration of an area in decline. It was constructed in the shadow of a large public housing project, Henry Horner Homes, on land that had been cleared of dilapidated housing by the City's urban renewal program. Hermitage Manor offered newly built, owner-occupied housing in a neighborhood where, in the 1960s, nobody was investing, nobody was building, and homeownership was rare.

As the neighborhood stabilized and improved, spurred on in recent years by massive public investments and the demolition of Henry Horner Homes, private investors begun looking not only at the properties surrounding Hermitage Manor, but at the cooperative itself. When members started receiving postcards from local realtors, asking about buying their shares, the cooperative's leaders realized their increasingly valuable real estate might someday be lost to outside speculators. "Our community is black gold," says the cooperative's president, Lucille Morgan Williams. "Developers are going to offer a member $50,000 to purchase their share. If they can get two-thirds of our members to sell, we're through." That cannot happen as long as the cooperative is still regulated by HUD, but once its 40-year mortgage is paid (or prepaid) the current limits on the resale price of member shares and limits on the household income of prospective buyers may be lifted. To forestall this possibility, the cooperative's board asked their attorney, Herbert Fisher, to draft and record a covenant designed

to perpetuate the affordability and eligibility of Hermitage Manor beyond the discharge of its HUD mortgage and regulatory agreement. This covenant was recorded in 1997.

The cooperative spends no money on marketing, since it is regularly bombarded with applications from acquaintances of current residents or from passers-by who notice the well-maintained townhouses and abundant greenery of Hermitage Manor while riding the train to and from the downtown Loop. Vacancies are few and eligibility is tight. To purchase shares in the Hermitage Manor Cooperative, prospective homebuyers must earn less than 95% of the Area Median Income (AMI). They must also have, at a minimum, an income exceeding four times the monthly carrying charge for the townhouse a family is hoping to occupy. No household is forced to move out of the cooperative if their income increases beyond 95% of AMI after becoming a member. A 10% surcharge is added to the monthly carrying charges, however, for any "over-income" members. As of September 2005, there were 18 households who were paying this surcharge. Current incomes for the cooperative's 108 members range from $10,000 to $102,000, with the majority earning between $24,000 and $46,000 per year.

The cooperative's five-person board is made up entirely of persons who reside at Hermitage Manor, although the bylaws would allow up to two nonresidents to serve on the board if elected by the cooperative's members. In addition to its primary job of overseeing the cooperative's finances and management, the board has shouldered several other responsibilities. It deals vigorously with any disruptive behavior threatening the safety or tranquility of this tight-knit community. Four or five hearings are held by the board every year where members who have violated the cooperative's policies must say why they should be allowed to remain in residence. The board also watches over the upkeep of the cooperative's townhouses. Members may be placed on a "housekeeping watch list" if they do not adequately maintain their units. They may ultimately be asked to leave if problems persist, although only two members in the cooperative's 35-year history have been removed because of poor housekeeping.

The board also takes the lead in organizing the clean-up, planting, and landscaping of the cooperative's grounds. These are tasks that the residents do themselves, freeing up the management company to concentrate on building maintenance and repairs. Every member participates in taking care of the cooperative's grounds and, while not required to do so, most members annually purchase outdoor greenery and flowers out of their own pockets. Helping to keep the grounds immaculate, in recent years, has been a crew of teenagers, hired and supervised by a three-person committee of the board. Hermi-tage Manor's Summer Youth Intern Program was started in 2001 when the cooperative's board voted to take $6,000 it had planned to spend on sending members to a national co-op housing conference and to use the money, instead, to leverage summer jobs for young people, providing an alternative to the distractions and dangers of the street.

The cooperative's president has resided at Hermitage Manor for 18 years. Many other members have lived there much longer. Such loyalty and longevity might be explained by any number of factors, including the quality and affordability of the cooperative's housing and the proximity of Hermitage Manor to parks, public transportation, and the jobs and attractions of downtown Chicago. But there is another explanation, as well. The cooperative's president says it best. When asked why residents tend to remain at Hermitage Manor for so many years, Ms. Williams has a ready answer: "People love it here. Our children can play in the courtyard; they run around unattended within the co-op's grounds. Everybody knows everybody else. This is a community."

# Resident-Owned Manufactured Housing Communities

## New Hampshire Community Loan Fund
## Concord, New Hampshire

There are 460 manufactured housing communities (or "mobile home parks") in New Hampshire, containing 25,500 units of housing. This housing is among the most affordable in the state. Most of it is owner-occupied. Much of it is at risk of being lost, mainly because the parks in which these homes are located are in jeopardy. The aging infrastructure in many parks has become too costly to maintain or to replace, threatening the health, safety, and amenity of the homeowners who rent lots in these parks and tempting town officials to look for ways to shut them down. At the same time, the appreciating value of the underlying land has become too lucrative to ignore, enticing many park owners to sell off their holdings for redevelopment into more profitable uses. Even in parks where the infrastructure is sound and the owners have no immediate plans to sell, lot rents have been steadily increasing, eroding the affordability of the manufactured housing set on these lots.

Over the past two decades, however, a significant number of the state's mobile home parks have been protected against loss because of the concerted efforts of the New Hampshire Community Loan Fund (NHCLF). Since 1984, NHCLF's Manufactured Housing Park Program has helped to convert 72 parks into Resident Owned Communities (ROCs), containing 3500 units of manufactured housing. In each of these communities, the land has been purchased, the infrastructure improved, and the park maintained by a cooperative housing corporation whose shareholders are made up of the park's residents. The same people who individually own the park's homes and individually lease the park's lots collectively own the park itself.

The Manufactured Housing Park Program offers residents two kinds of assistance. A "cooperative assistance team" provides training and support in the technical details of establishing a cooperative, acquiring the land, rehabilitating the infrastructure, and managing the park as a cooperative enterprise. The NHCLF also provides blanket financing for the park's acquisition, generally in concert with a local bank. Total lending has exceeded $30 million. In the program's 22-year history, there have been no defaults on any of NHCLF's loans for the purchase and rehabilitation of these cooperatively owned parks.

Part of NHCLF's purpose and success in lending to ROCs has been to draw conventional lenders into this emerging market. NHCLF takes a second position on most of its loans to cooperatives, encouraging the financial participation of private and public lenders. NHCLF has also strived to demonstrate the security of mortgaging manufactured housing lending in these cooperatively operated communities through its own lending. Beginning in 2002, NHCLF's Cooperative Home Loan Program began providing purchase, improvement, and refinancing loans for individual homes within ROCs. Soon after, the New Hampshire Finance Agency opened its own first-time homebuyer program to households buying manufactured homes in ROCs. Further, the USDA has now opened its 504 home repair program to homeowners in ROCs. None of these programs is currently available to manufactured housing in investor-owned parks.

The twin aims of NHCLF in supporting the conversion of mobile home parks to cooperative ownership are stability and affordability. A park's precarious existence is stabilized by giving residents, rather than an absentee landlord, direct control over the park's land and infrastructure. Residents can never be tempted to dissolve the co-op and to sell the land for personal gain because the state statute governing cooperatives requires a cooperative, upon dissolution, to

distribute its assets to another cooperative or to a 501(c)(3) nonprofit.* Assured that the land beneath their homes will not be suddenly sold, assured that lot rents will not precipitously increase, and assured of financing from public and private lenders who consider ROCs a safe investment, the residents of these communities are more likely to stay put. They are also more likely to make necessary repairs and desirable improvements to their homes and parks.

Affordability is enhanced in these ROCs by the stabilization of lot rents and by the limitation imposed on the transfer value of member shares. Homeowners living in a park converted to cooperative ownership or homeowners moving in after a park's conversion purchase a share in the cooperative housing corporation which owns and operates the park. The purchase price for these shares, among the state's 72 mobile home cooperatives, generally ranges from $500 to $1,000. When a homeowner decides to move out of a park, his or her member share is repurchased by the cooperative for the same price which the homeowner originally paid for it. The share is resold by the cooperative to whoever purchases the departing owner's manufactured home.

Although limitations are placed on the transfer value of member shares, no restrictions are imposed on the resale of the manufactured housing located in these communities. Once the land is secured and lot rents are stabilized, such housing tends to remain relatively affordable, reducing the need for price controls. NHCLF staff who are assisting these parks contend that homes in ROCs will always sell for a lower price than single-family homes on fee-simple sites. Data collected by the Carsey Institute of the University of New Hampshire bears them out. The average cost of purchasing a manufactured home in a ROC is currently $53,000. By comparison, the median sales price of a stick-built, owner-occupied house in New Hampshire now stands at $230,000.

NHCLF's Manufactured Housing Park Program has recently ventured into new territory. Drawing on its two decades of experience in financing and organizing ROCs, the Program is developing a 25-acre, 44-lot manufactured housing community from scratch. Through this project, NHCLF hopes to demonstrate not only the feasibility and desirability of creating new ROCs,† but the durability, affordability, and aesthetic appeal of modern manufactured housing. NHCLF also established the Meredith Institute in 2005 to document its procedures and performance in organizing ROCs and to provide national training for nonprofit organizations that are interested in starting ROCs of their own.

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* New Hampshire's mobile home cooperatives are organized as "Consumer Cooperative Associations" under Chapter 301-A of Title XXVII. Upon dissolution, shareholders receive the par value of their shares but nothing else.

† The development of new ROCs in New Hampshire was made somewhat easier by a 1993 statute that requires every municipality to afford "reasonable opportunities for the siting of manufactured housing."

# III. Design

## Contractual Controls Over Use and Resale

*Shared equity homeownership comes encumbered with a set of long-lasting, contractual controls over the use and resale of a homeowner's property. The content of these controls is quite malleable, giving those who develop, sponsor, or fund resale-restricted housing considerable leeway in designing their projects and programs. A dozen design elements found in nearly all forms of shared equity homeownership are examined in the present chapter.*

Every model of resale-restricted, owner-occupied housing is characterized by a form of tenure in which rights and responsibilities are "shared" between the owner-occupants of residential property and some outside party, with the latter imposing a set of durable, contractual controls over the use and resale of a homeowner's property. These controls are not model-specific. Indeed, at this level of analysis, where the focus is on the programmatic components of shared equity housing, many of the distinctions among individual models largely disappear. Different models of shared equity homeownership can employ controls that are much the same. Conversely, the same model may employ controls that are quite different, as the model is adapted and applied in different locales. The specific content of these controls is determined less by the structural requirements of a particular model, in other words, than by the program goals and political priorities of those who are promoting shared equity housing in a particular locale. For example, every one of these models is capable of preserving the affordability of owner-occupied housing far into the future. Every one of them is capable of restricting access to "eligible" homebuyers. Within the framework of this general commitment to perpetuating the affordability of owner-occupied housing for a targeted class of people, however, there are very specific programmatic choices to be made. The sponsors of shared equity housing must decide how long its affordability will be made to last. They must decide who will be eligible to purchase this housing.[72]

Duration and eligibility are only two of a dozen issues that must be addressed in designing a program of shared equity homeownership to fit the priorities of a particular community. Other design elements include decontrol, disclosure, occupancy, legacy, maintenance, improvements, financing, the resale formula, the resale process, and enforcement. All twelve of these essential programmatic components are described in the present chapter, accompanied by a survey of the principal options pursued by the sponsors of shared equity housing in crafting and implementing each component.[73]

## I. Duration

The design of shared equity homeownership begins with the fundamental question of "how long should controls over the use and resale of this housing be made to last?" The immediate answer of many sponsors is "forever": Shared equity homes should be permanently encumbered with external restrictions designed to perpetuate their availability and affordability for a targeted class of low- or moderate-income homeowners. Permanent affordability is, in fact, an integral part of the mission and design of community land trusts and limited equity cooperatives. Both models impose contractual controls that last as long as the housing stands and the organization survives. In the case of the CLT, these controls may outlast even the housing and the organization, since the ground lease endures if the structural improvements are destroyed or the CLT is dissolved.[74]

Permanent affordability is often a goal of deed-restricted housing as well. Social controls over the use and resale of houses, townhouses, and condominiums can be made to "run with the land," forever binding all subsequent owners. Alternatively, permanent affordability is sometimes pursued by establishing a control period that lasts for a decade or more and then resetting the clock every time a deed-restricted home is refinanced or resold. Two California cities, for example, Palo Alto and Watsonville, impose a 59-year affordability restriction and a 40-year affordability restriction respectively, using deed covenants for homes created through inclusionary zoning. Neither lasts forever, but in both cases the control period is restarted every time an inclusionary home is refinanced or resold. Since few owners will go this long without refinancing or reselling their homes, something very close to permanent affordability is achieved.

There are many other cases, however, where the sponsor of resale-restricted, owner-occupied housing has chosen a much shorter control period. Montgomery County, MD, is the best-known example. When its inclusionary housing program was enacted in 1974, Montgomery County required affordability controls lasting only five years. In 1981, as thousands of inclusionary units began shedding their affordability, county officials realized that five years was too short and increased the duration to ten years.[75] This did little to address the problem of expiring affordability, however. Between 1977, when the first inclusionary units came on line, and 1999, Montgomery County's inclusionary housing program produced 10,572 units of resale-restricted housing, 72% of which were owner-occupied. By 1999, only 3,803 units created by inclusionary zoning were still governed by mandatory affordability restrictions (Brown, 2001: 5).[76] Not until 2005 – by which time two-thirds of the resale-restricted units created by this program were no longer subject to external controls over their use or resale – did Montgomery County finally amend its MPDU ordinance to require 30 years of affordability for owner-occupied units, including a provision for restarting the 30-year clock for any units reselling within the original control period.

The program options for dealing with duration are bounded by these extremes. They range from the short-term affordability required by Montgomery County for the first 32 years of its inclusionary program to the permanent affordability pursued by community land trusts, limited equity cooperatives, and some sponsors of deed-restricted housing.[77] Most proponents of shared equity homeownership would prefer for controls over the use and resale of such housing to last forever. Political realities sometimes force them to settle for "as long as possible."[78]

## II. Decontrol

Regardless of whether the intended duration is short or long, contractual controls over the use and resale of shared equity housing can come to an end, either because the period of control has lapsed, the homeowner has defaulted, or the administrative entity charged with enforcing the controls has disappeared. In the first scenario, the controls are lifted because the period specified in the original agreement between the household who bought the home and the entity that imposed the controls has run its course. In the second scenario, the controls are removed in whole or in part because they were subordinated to a mortgage or deed of trust in order to secure financing for the homeowner's purchase of the property. If the homeowner defaults and the lender forecloses, these controls disappear, allowing the lender to sell or to lease the property to

whomever is willing to pay the lender's price. In the third scenario, the controls no longer have effect because no one is left to enforce them. The entity expected to monitor and to enforce these controls has abandoned its earlier commitment to long-term affordability, has lost the capacity (or the will) to fulfill its contractual responsibilities, or has gone out of business altogether.

The design of shared equity homeownership must anticipate all three scenarios, answering the question of what happens when residential units that were once encumbered with multiple restrictions over their use and resale are no longer subject to such controls. What happens, in particular, to the public (or private) subsidies invested in this housing, which made it affordable in the first place, and what happens to the appreciated value accumulated in this housing over a number of years? The combined value of the upfront subsidies and later appreciation may be quite substantial by the time long-standing controls are lifted. Some process must be in place for determining how much of this equity may be pocketed by whoever is fortunate enough to own and occupy the property when these restrictions go away.

*Option 1: Allow the home to enter the market, with neither restrictions nor recapture.* The decontrol of resale-restricted, owner-occupied housing has frequently been accompanied by no residual control over the property's use and resale beyond what zoning or other municipal regulations might impose on housing of a similar tenure and type. Whoever owns the home on the day of decontrol is allowed to pocket all of the equity embedded in the home when the property is resold. Affordability is lost, along with any subsidies that had been invested in the home to reduce its purchase price for a lower-income homebuyer.

*Option 2: Retain a right of first refusal for the first sale after decontrol.* Alternatively, a sponsor of shared equity housing may retain a right of first refusal to purchase these homes at the first resale after decontrol. No attempt is made to limit either the price of the housing or the equity of the homeowner. The outside party possesses only a preemptive right to meet and match whatever market-rate price that a bona fide buyer would be willing to pay for the property.

*Option 3: Recapture the original subsidy at the first sale after decontrol.* There are other shared equity housing programs where any public or private subsidy invested in a home is recaptured at resale, whenever the property eventually changes hands (at some point after the day of decontrol). This option does nothing to preserve the home's affordability, but it does preserve some of the subsidy that was used to make the home affordable in the first place. These recaptured funds can then be used to help another lower-income household to purchase a home.[79]

*Option 4: Capture a portion of the appreciation at the first sale after decontrol.* Some decontrol provisions recapture more than the original subsidy. At the first resale after decontrol, they require the homeowner to repay not only the amount of the original subsidy but something extra. This added amount may be equivalent to a modest rate of interest charged against the original subsidy, say 5% a year. Alternatively, the amount recaptured after decontrol may be pegged to a property's appreciation, with an outside party claiming a percentage of this appreciation when the property is resold.

*Option 5: Control the use of the land, after controls over the housing have lapsed.* A fifth decontrol option is unique to the community land trust. A CLT continues to own the underlying land even when a lender has foreclosed on a home located on a CLT leasehold.[80] In such cases, it is standard for contractual controls over the occupancy, eligibility, and resale of a foreclosed CLT home to disappear, allowing the lender to resell the home on the open market. The CLT is then obligated to lease the land to whoever pays the lender's price. Some of the use controls contained in the ground lease prior to foreclosure will also appear in the ground lease executed with the new homeowner, giving the CLT a modicum of control over how the home is maintained and improved. More importantly, because the CLT is not obligated to charge the same "affordable" ground rent to the buyer of a foreclosed home as the CLT was probably charging to the lower-income homeowner-leaseholder who was foreclosed upon, the CLT may be in a position to persuade the lender or the new homeowner to accept reinstated use or resale controls in exchange for a lower ground rent.

## III. Eligibility

Whenever owner-occupied housing is to be made affordable and kept affordable for a specified period of time, a critical question is "affordable for whom?" More specifically: who may buy a resale-restricted home when it is initially offered for sale and who may buy this home when it is eventually resold for a formula-determined price that may be much lower than the property's market value? These questions require the organizers, sponsors, or funders of shared equity homeownership to make three separate programmatic decisions with regard to eligibility. They must define the threshold criteria that a prospective homebuyer must meet in order to qualify for a resale-restricted home ("defining eligibility"). They must decide what to do if no homebuyers can be found who meet these criteria ("relaxing eligibility"). They must decide how to handle households who become ineligible after buying a resale-restricted home ("addressing later ineligibility").[81]

### Defining Eligibility

Household income is the most common eligibility standard established for shared equity housing. The prospective buyer of a resale-restricted home, whether at initial sale or eventual resale, is required to have a household income that does not exceed a specified percentage of the Area Median Income (AMI) for a particular city or region. Depending on the funding used to create such housing, the eligibility requirement may sometimes range as high as 150% of AMI or as low as 60% of AMI.[82]

After household income, the next most common eligibility requirements for the purchase of shared equity housing are residency or occupation. These are found most often where resale-restricted, owner-occupied housing is the direct result of the investment of public dollars or the exercise of public powers, like incentive zoning or inclusionary zoning. Thus a city or county may require, as a condition of its support, that priority in purchasing shared equity housing be given to people who already live or work within that jurisdiction. Similarly, priority in purchasing shared equity housing may be given to a jurisdiction's police officers, firefighters, schoolteachers, or other "key workers." The special challenge for eligibility requirements other than household income, however, is fair housing. If protected classes of people have historically been excluded from residing in a particular jurisdiction or are presently underrepresented among a jurisdiction's "key workers," then tying eligibility to either residency or occupation can reinforce existing patterns of discrimination.

### Relaxing Eligibility

What happens if there are no eligible buyers who are ready and willing to purchase a shared equity home when it comes up for sale? Is there a point when a community land trust, a limited equity cooperative, or the developer of deed-restricted housing, after failing to find a buyer who meets the eligibility requirements, will be allowed to sell a resale-restricted home to anyone, regardless of the buyer's income, residency, occupation, or other conditions of eligibility? Some sponsors of shared equity homeownership say "no": Eligibility trumps all else, even if that means leaving an available home vacant for a very long time. Others say "yes": If an eligible buyer cannot be found after months of aggressively and affirmatively marketing a resale-restricted home, the rules of eligibility should be relaxed.

For programs embracing the latter position, the sponsors must decide two issues: (1) how long must the home be offered for sale to an eligible population before eligibility requirements are relaxed; and (2) how much should eligibility be relaxed?[83] Programs that allow for the eventual modification or removal of eligibility requirements usually require shared equity homes to be marketed exclusively to eligible households for at least a 60-day period. Extended eligibility periods lasting as long as a year are not unheard of, however. Once this period has expired, eligibility is relaxed. In most cases, the eligibility requirements are removed in their entirety, so that sellers may offer their shared equity homes to anyone who is willing to pay the price and to accept the use and resale restrictions that come with the deal. Some programs, on the other hand, allow eligibility to be modified in stages. For example, if a buyer earning less than 80% of AMI cannot be found within 60 days, the seller is allowed to sell his or her resale-restricted home to a

household earning less than 100% of AMI. If another 60-day period passes without finding an eligible buyer, the seller may sell to a household earning less than 120% of AMI. For programs with multiple requirements for eligibility, moreover, it is possible to relax one requirement (e.g., household income), while retaining another (e.g., residency or occupation).

### Addressing Later *In*eligibility

The owners of shared equity housing, unlike most occupants of subsidized rental housing, are usually not subjected to an annual recertification of household income. They are not required to meet, during the course of their tenure, the same standard of eligibility they were required to meet in initially qualifying to purchase a shared equity home.[84] Should their income go up in later years, therefore, rising above an original eligibility standard of 80% of AMI, there is neither a penalty nor a cost to the homeowner. A homeowner's subsequent ineligibility, in other words, is without consequence. As succinctly described by one CLT advocate, "we're in the business of guaranteeing perpetually affordable housing, not perpetually eligible people."

Nevertheless, there are exceptions to this rule. Within the diverse world of shared equity housing, there are no known cases of homeowners being forced to resell and to vacate their homes because of an increase in the household's income, but there are cases where a change in household income or household composition has increased the cost that the owner of a shared equity home is asked to bear. This is more common in limited equity cooperatives than in other forms of shared equity homeownership, because of the wider use of publicly funded rental certificates and vouchers in LECs to cover a portion of a member's monthly carrying cost in occupying a co-op unit. Such public assistance is frequently accompanied by a requirement for a higher contribution by a low-income occupant if his or her income rises beyond 60% of AMI. CLTs, by contrast, do not increase their lease fees when homeowners who are living on the CLT's land are successful in increasing their household income after purchasing a CLT home. It is equally rare for the owners of deed-restricted housing to be assessed higher fees, to be charged a higher rate of interest on a subsidized mortgage, or to be pressured to vacate a shared equity home if their circumstances change in later years, where they no longer meet the eligibility standards they were required to meet when initially buying the home.

## IV. Disclosure

Informed consent is necessary if contractual controls over the use and resale of shared equity housing are to be enforceable. Informed consent is also essential if resale-restricted homeownership is to be accepted and supported by the community. Any suspicion that the owners of shared equity housing were misinformed or misled at the time of purchase – "duped" into buying something they did not fully understand – may undermine the legal and political foundation on which such housing is built.

Despite this danger, too many sponsors of shared equity housing do not do nearly enough to review with prospective homebuyers the rights, responsibilities, and limitations that accompany the property they are being asked to buy. They do too little to ensure the informed consent of their homebuyers, trusting that the typical process of buying and financing residential real estate will adequately disclose the terms of the deal and legally protect both the buyer and seller of a shared equity home.

By contrast, many other sponsors of shared equity housing tend to err on the side of caution when offering such housing for sale. Recognizing that there is nothing "typical" about these alternative models of tenure, they go to great lengths to help prospective homebuyers to understand the full array of private rights and social constraints that come with the property they are thinking of buying. They design into their programs, accordingly, one or more of the following strategies for ensuring – and documenting – the informed consent of the people to whom shared equity homes are being sold.

### Orientation of Prospective Homebuyers

Most sponsors of resale-restricted housing use general information sessions to introduce these unusual models

of homeownership to the general public. Such sessions have a dual purpose: to market the housing to would-be homebuyers and to win acceptance for these unfamiliar models from the larger community. Prospective homebuyers, once they declare some interest in possibly purchasing a shared equity home, are then treated to a more intensive review of the terms and conditions that accompany this housing. Most CLTs, LECs, and developers of deed-restricted housing appreciate that these are not models that lend themselves to the "hard sell." They try, in fact, to screen out prospective homebuyers whose understanding of these models is shallow or whose acceptance of the responsibilities and restrictions inherent in these models is doubtful. An important part of the orientation sessions conducted by most sponsors of shared equity housing, therefore, is the full disclosure of all durable controls encumbering the use and resale of these owner-occupied homes.

### Distribution of Legal Documents

At an early stage in the process of selling a resale-restricted home, it is customary to share with the prospective buyer all of the legal documents that establish and encumber the property in question. In many states, this is not merely a matter of custom, but a requirement of law, with a state statute spelling out in considerable detail the sorts of information that must be provided to the prospective buyer of a house, townhouse, condominium, or cooperative apartment. Whether required by state law or not, the information provided to the prospective buyer of a shared equity home must disclose all contractual restrictions on the use and resale of his or her home. The documents containing these restrictions are shared with every prospective buyer, long before the home is sold.

### Plain-Language Description of Social Controls

Many sponsors of shared equity housing complement their distribution of legal documents with plain-language descriptions and illustrations of the basic "deal" that a prospective homeowner is being asked to buy. Avoiding legalese, these descriptions tend to focus on the ways in which the rights and responsibilities of a shared equity home are different from those of more conventional forms of homeownership. Special attention is usually paid to the limitations that are placed on the resale of a shared equity home, reminding the would-be homeowner of the cap that is placed on his or her equity and including, in some cases, a down-to-earth explanation for why that cap is there.

### Stipulation of Understanding and Acceptance

Some sponsors of shared equity housing make a special effort to document the informed consent of their homebuyers. Before closing on a resale-restricted home, the buyer is required to sign a "letter of stipulation," stating the lessee's own understanding and acceptance of the use and resale restrictions that encumber the property. A copy of the letter is placed in the homeowner's file, stored away for future reference by whatever administrative entity has been assigned responsibility for monitoring and enforcing these restrictions over time.

### Consultation with Independent Counsel

Some sponsors of shared equity housing, especially CLTs, require prospective homebuyers to consult with an attorney (who is not in the sponsor's employ) prior to purchasing a resale-restricted home. Following this consultation, the attorney is asked to provide the seller with a letter indicating that the homebuyer has had the benefit of legal counsel and that counsel has explained the documents being signed. The attorney is not asked to warrant that the client actually understands the deal, but that the client has had the benefit of an attorney's advice in reviewing all of the documents and conditions accompanying the conveyance of the home.

### Disclosure for Subsequent Owners and Heirs

Because the social controls on shared equity housing last for many years, covering a succession of owners, most sponsors of shared equity housing know that disclosure cannot stop with the initial owner. Informed consent must be part of every transfer of a shared equity home, not just the first time it is sold. Every buyer must fully understand and freely accept the conditions and restrictions that encumber the home. This is no less true of heirs. Anyone who receives a shared equity home through

purchase or inheritance must understand the obligations and encumbrances that accompany it.

## V. Occupancy

One of the most common use restrictions found in shared equity housing is a requirement for the continued occupancy of a home by the same person who owns it. Owner-occupancy is not left to chance. Absentee ownership is discouraged – or prohibited. Subletting is regulated – or prohibited. The three most common variations in the design of these occupancy controls are as follows:

*Option 1: Require full-time occupancy; prohibit subletting.* The most extreme occupancy requirement totally prohibits both absentee ownership and subletting. The owner must continuously occupy the home for 12 months of every year. Failing to do so, the homeowner may be declared in default of the conditions under which the home is owned and may be forced, after due process, to resell and to vacate the home.

*Option 2: Establish minimum requirement for occupancy; prohibit subletting.* Some sponsors do not permit the subletting of shared equity homes but do allow homeowners to be physically absent for a limited amount of time without running the risk of default. As long as homeowners maintain their shared equity homes as their "primary legal residence," they may leave the home for one month, two months, or more, depending on the term set by the sponsor.[85] The homeowner may be required to secure the sponsor's prior permission for any absence lasting longer than a couple of weeks, or may simply need to notify the sponsor that the home will not be occupied for a while. In either case, it is clear that the home will remain vacant during the owner's absence. Under this particular option, a homeowner may not assign his or her right of occupancy to someone else, even if that person were to live there for free while the homeowner was away.

*Option 3: Establish minimum requirement for occupancy; regulate subletting.* The most common occupancy requirement for shared equity housing establishes the same sort of minimum requirement described under option #2 above, but allows subletting – within limits. Homeowners are required to notify whatever administrative entity is charged with monitoring and enforcing the use controls on their home of their intent to sublet. They must also secure that entity's approval for both the person(s) who will occupy the unit and the terms under which the unit will be let. Beyond these basic restrictions, there may be a cap imposed on the amount of rent that homeowners may charge when subletting their homes, a maximum which is spelled out in the covenant, ground lease, or proprietary lease regulating the homeowner's occupancy of his or her home. The limit that is placed on the rent that a homeowner may collect when subletting is a complement to the limit that is placed on the equity that a homeowner may claim when reselling. The preservation of affordability is the purpose of both.

## VI. Legacy

To whom may a homeowner bequeath his or her property? In market-rate housing, the answer is pretty straightforward: you may will your home to whomever you wish. The designated heir (or heirs) inherits the ownership interest, along with the right to occupy the home if so desired. In shared equity housing, by contrast, ownership and occupancy are often separated. Homeowners may bequeath their residential property to whomever they wish, but not every heir will have the right to occupy it. Heirs who fail to meet eligibility requirements for gaining admission to a shared equity home may be barred from occupancy and forced to sell their ownership interest. They get to profit from the home, receiving from the sale the same limited equity price which the deceased homeowner would have received had s/he resold while still alive, but they do not necessarily get to live there. Legacy, like the other program elements that go into designing shared equity homeownership, is not handled that same way in every case. Three options constitute the main variations.

*Option 1: No restrictions on occupancy for heirs.* The separation of ownership and occupancy in fulfilling a behest is not found in every case of shared equity homeownership. There are sometimes no restrictions on occupancy, other than the requirement that heirs who intend to occupy the resale-restricted home must abide by the same restrictions on use and resale to which the original homeowner was bound.[86] Any designated heir of the present owner may occupy the shared equity home upon

the homeowner's death, with no interference from the housing's sponsor.

*Option 2: No restrictions on occupancy for "family members".* Nearly all models of shared equity homeownership allow the spouse and children of a deceased homeowner to occupy a home they have inherited, even if these heirs do not meet the housing's income qualifications or other eligibility requirements. This exemption is sometimes narrowed to include only those family members who were already residing in the home at the time of the homeowner's death. Alternatively, eligibility is sometimes broadened to include heirs who are not related to the deceased homeowner by marriage, adoption, or blood, but who are a "member of the homeowner's household," having occupied the home for at least a year prior to the homeowner's death.[87]

*Option 3: Occupancy guaranteed only for "eligible" heirs.* In some cases, the behest of a shared equity home does not guarantee that the new owner will be permitted to inhabit the home, even when the ownership interest has been bequeathed to a family member. Although rare, this restriction is sometimes found in cooperative housing. Some co-op attorneys argue that the cooperative's right to approve who may reside in a cooperative apartment is absolute. Even the child of a deceased co-op member who was occupying the unit at the time of the member's death, therefore, may be forced to leave if the co-op board decides that the heir does not meet the cooperative's standards of eligibility.

## VII. Maintenance

The owners of shared equity homes are expected and, in most cases, required to maintain their homes in good repair. Variations in this requirement arise out of (1) differing standards among the sponsors of shared equity housing for what constitutes "good repair" and (2) differing approaches for remedying violations of this maintenance standard.[88]

*Option 1: Rely on municipal codes and enforcement.* The only standard imposed by many sponsors of shared equity housing is a requirement for homeowners to maintain their property in compliance with all applicable safety, sanitary, zoning, building, and fire codes established by the state, county, city or town in which they reside. The sponsor neither inspects homes on a regular basis, nor intervenes to compel proper maintenance. It is left entirely up to public officials to determine whether homeowners are in compliance with applicable law.[89] Only when a homeowner is actually cited by a governmental agency for failing to maintain his or her property in compliance with local codes is the sponsor allowed to intervene. If the violation goes uncorrected, the sponsor may declare the homeowner in default of the home's covenant, ground lease, or proprietary lease and, depending on the circumstances, may either impose financial penalties on the offending homeowner, make its own repairs to the unit and bill the homeowner for the work or, in extreme cases, remove the homeowner from the premises.

*Option 2: Require maintenance sufficient to retain insurance.* A slightly higher maintenance standard is sometimes imposed by sponsors whose principal concern is the ongoing insurability of shared equity housing. The owners of such housing are usually required to be continuously insured against loss, damage, or liability caused by fire, natural disaster, or the homeowner's own neglect. They must maintain their property to the degree necessary to retain such coverage. The insurance carrier becomes, in effect, the one who sets the standard of maintenance against which the homeowner will be judged. Since it is rare, however, for the agents of any carrier to inspect owner-occupied property on a regular basis, this task typically falls to the administrative entity charged with monitoring and enforcing the housing's use and resale controls.

*Option 3: Require maintenance sufficient to avoid major costs for subsequent owners.* The maintenance standard used in much shared equity housing is designed with an eye toward preserving its habitability and affordability for the next low-income household who will someday purchase and occupy the home. The homeowner is required to maintain the structure and systems at a high enough level of repair so as not to inflict major costs on a subsequent buyer, who would otherwise be forced to do major rehabilitation or system replacement prior to occupying the home. Although some sponsors of shared equity housing attempt to enforce this standard through annual

inspections, this process can be difficult, expensive, and intrusive. It is more common for the sponsor to inspect the home at the time of resale in order to determine whether maintenance has been neglected and the home has suffered "excessive damage" beyond normal wear and tear. If the answer is "yes," the homeowner may be forced to correct such deficiencies before a resale can occur. Alternatively, the estimated cost of such repairs or replacements may be deducted from the homeowner's equity at the time of resale.[90]

*Option 4: Require maintenance sufficient to retain neighborhood support.* Compatibility is the lofty goal adopted by some sponsors of shared equity housing, a maintenance standard designed primarily to ensure continuing acceptance and support for a particular project from the neighbors who surround it. This means, at a minimum, maintaining the housing so as not to create any nuisances, public or private. But it usually goes further, requiring homeowners to meet a standard of upkeep in their buildings and grounds that far exceeds what the local jurisdiction might require. It may even extend to aesthetic concerns such as the condition or color of a home's façade. Although most commonly found in multiunit projects organized as condominiums or cooperatives, where the neighbors whose support is sought include not only people who live beside the project but those who live within it, these so-called "compatibility standards" are sometimes a part of the use restrictions appended to the deeds or leases of single-family detached houses as well.

## VIII. Improvements

Most forms of shared equity homeownership make a distinction between minor repairs that all homeowners must conduct on a regular basis to maintain the utility of their resale-restricted homes and major improvements that some homeowners choose to make in order to increase the use value or resale value of their property.[91] Control of the latter is especially tight in most shared equity housing, with an outside party saying what sorts of improvements a homeowner may make and how much value (if any) these improvements may add to the homeowner's equity.

*Control over improvements allowed* comes in many varieties. At one extreme, shared equity homeowners are permitted to make any capital improvements they want. No restrictions are imposed and no approvals are needed, as long as the party regulating the property's use and resale is notified before the work begins, mainly to verify that all government permits have been obtained. At the other extreme, homeowners are prohibited from completing or commissioning any capital improvements themselves. If improvements are desired (and justified), they are done by the cooperative housing corporation, the community land trust, or another party sharing in the property's ownership. Between these distant poles of permission and prohibition, lies much variation. Some sponsors of shared equity housing insist on reviewing, approving, and inspecting only those improvements for which a permit must be pulled from the municipality. Some require prior approval only for improvements extending beyond the plane of an existing building. A few insist on reviewing and approving the installation of major appliances, as well as structural improvements and system replacements.

*Control over value added* by capital improvements comes in many varieties as well. There are two concerns here: which improvements should be counted toward the homeowner's equity (claimed at resale), and how should that value be measured? Even in market-rate housing, it should be noted, homeowners are not guaranteed a dollar-for-dollar return for improvements they make to their property. Some improvements increase a property's appraised value (and, therefore, a homeowner's equity); some do not. In shared equity housing, however, it is not the market that determines which improvements increase a homeowner's equity – and by how much – but the resale formula. The valuation of improvements poses a couple of challenges in designing such a formula.[92]

The first challenge lies in distinguishing between improvements that increase the utility of the home (e.g., addition of a bathroom or another bedroom) and those that are deemed discretionary luxuries. Should the owner of a shared equity home be credited with added equity for the value of an in-ground swimming pool or for the value of a marble bathtub with gold faucets? Most sponsors

of shared equity housing are reluctant to prohibit the installation of such personal luxuries. At the same time, they do not want the future price of a resale-restricted home to soar beyond what another low-income household can afford to pay. A limit is often placed, therefore, on which improvements will be credited toward a homeowner's equity when the home is resold – and which will not.[93]

The second challenge is assigning a monetary value to these improvements. Sponsors who allow their homeowners a credit for some (or all) of the improvements they make must decide whether to calculate that credit based on what goes into the improvement (i.e., the homeowner's investment in materials and labor), or what comes out of the improvement (i.e., the change in the property's value as a result of the improvement). Sponsors who choose the former approach find it relatively easy to determine the value of the owner's investment when the homeowner pays a contractor for the full cost of the improvement. The calculation becomes more difficult when homeowners invest their own labor or get a semi-skilled friend to help. Sponsors who choose, instead, to assess the effect of the improvement on the home's value face a different kind of problem. They must deal with the fact that such assessments are speculative and inexact, particularly when there is an accumulation of many small improvements over a number of years.

The interaction of "approval needed" and "value added" demarcates the four different options that the sponsors of shared equity housing have pursued in designing an improvements policy. These are pictured below:

| | **Approval Needed?** NO | **Approval Needed?** YES |
|---|---|---|
| **Value Added?** NO | **OPTION 1** | **OPTION 3** |
| **Value Added?** YES | **OPTION 2** | **OPTION 4** |

*Option 1: Approval not required. Value not added.* Homeowners are permitted to make any improvements they want, with no interference from the sponsor of the shared equity housing, as long as they secure all necessary permits and satisfy all building and zoning requirements of the local jurisdiction. The value of these improvements is not credited toward the homeowner's equity, however, nor is it added to the price that a subsequent buyer must pay for the home.

*Option 2: Approval not required. Value is added.* Homeowners may make any improvements that are permitted by the building and zoning requirements of the local jurisdiction. They do not require approval from the sponsor of their shared equity housing. The value of these improvements is added to the homeowner's equity and to the resale price that is paid by the next homebuyer. In a variation of this option, the sponsor publishes a short list of "preapproved" capital improvements that do not require the sponsor's review or consent before being made by the homeowner. The value of these improvements – and only these – is credited toward the homeowner's equity.[94]

*Option 3: Approval is required. Value is not added.* Many sponsors of shared equity housing want the opportunity to review and to approve in advance any major alterations that a homeowner proposes to make in housing that the sponsor will someday repurchase and resell to another low-income homeowner. Even when a proposed improvement has no effect on the home's resale price, as is the case under option #3, the sponsor may still have an interest in ensuring that improvements will be well constructed using durable materials and will not compromise the habitability or marketability of the home. All improvements require the sponsor's approval, therefore. Once completed, none of these improvements add to the homeowner's equity or to the home's resale price. They are made solely for the homeowner's enjoyment.

*Option 4: Approval is required. Value is added.* In most cases where homeowners are allowed a credit for improvements they construct or commission themselves, the sponsor of the shared equity housing insists on reviewing and approving the plans prior to construction. Not only does this allow the sponsor to exert quality control over the proposed improvements, it also allows the sponsor to determine the value to be credited to the homeowner's equity once the improvements are completed. Under option #4, it is "common practice for the sponsor to limit the kinds of improvements that are eligible for earning the homeowner a capital improvement credit. As in

option #2, the homeowner may receive a credit only for "eligible" improvements, listed in the covenant, ground lease, proprietary lease, or other document regulating the home's use and resale. Unlike option #2, however, the homeowner must seek the sponsor's prior approval for any improvement, even those that do not add to the homeowner's equity.

## IX. Financing

Under what circumstances may homeowners mortgage or otherwise encumber their property for the purpose of financing its acquisition or improvement? Some sponsors of shared equity housing actively discourage homeowners from borrowing against their homes – and, in fact, may go so far as to prohibit the recording of any mortgage or lien against an individual's property. Among LECs in particular, where financing is usually secured in the form of a blanket mortgage for an entire multiunit project and where most capital improvements are initiated and funded by the cooperative itself, individual borrowing to acquire or to improve a single cooperative apartment is atypical.[95] Among deed-restricted housing and CLTs, the opposite is nearly always true. Homebuyers are required to obtain individual mortgages in purchasing a home and, if later improvements are allowed, homebuyers must finance those improvements themselves. The sponsors of such resale-restricted housing tend to go to great lengths, therefore, to ensure that the encumbrances they impose do not prevent their homeowners from accessing private and public sources of capital.

The biggest barriers to financing a resale-restricted home are the restrictions themselves,[96] especially those regulating the home's occupancy, eligibility, and affordability. A lender may be content to allow contractual limitations on who may occupy a shared equity home during the term of the mortgage and what its price may be when resold or sublet, but a lender will want these limitations to disappear if the lender is ever forced to foreclose on the property (or to take a deed in lieu of foreclosure). It is common practice, therefore, for the sponsors of shared equity housing to allow for these particular limitations to be subordinated to a homeowner's mortgage. If the homeowner defaults on his or her mortgage and if the lender forecloses, the lender is allowed to sell or to lease the foreclosed property to any occupant, earning any income, for whatever the market will bear.

While subordination is the price that the sponsors and owners of shared equity housing are usually forced to pay if they are to secure private financing for the acquisition or improvement of their homes, nobody's interests are served when homes fall into foreclosure. Homeowners can lose all of their equity, along with their homes. Sponsors lose the irreplaceable subsidies they have worked so hard to secure and the affordable housing they have worked so hard to create.[97] Lenders, too, nearly always lose money, since foreclosure is seldom as profitable as a performing loan. To prevent these undesirable outcomes, many sponsors of shared equity housing, while doing what they must to make financing possible, do what they can to make foreclosures rare. They design into their programs, accordingly, one or more of the following five controls.

*Option 1: Prior approval of mortgages and liens.* Many sponsors of shared equity housing retain the authority to review and to approve any mortgage or lien prior to its being recorded against a resale-restricted home. This allows the sponsor to protect its clients against predatory lending and to protect itself against mortgage provisions that might undermine its ability to regulate the home's use and resale. In some shared equity homeownership programs, this approval authority is unlimited: the sponsor's consent may be granted or withheld entirely at the sponsor's discretion. In other programs, the sponsor's authority is more narrow. The sponsor must consent to any mortgage that meets certain conditions or contains certain features specified in the covenant, ground lease, or proprietary lease regulating the property's use and resale.[98] Even in the latter circumstance, however, the sponsor has the right to review and to approve the proposed mortgage or lien, in order to verify that it qualifies as the sort of instrument that the sponsor is required to approve. If the mortgage or lien does not, then the sponsor can block the homeowner's attempt to obtain financing for his or her home.[99]

*Option 2: Notice of default.* Regardless of the degree of control exercised in reviewing a mortgage at the front

end of the financing process, most sponsors of shared equity housing want to know if their homeowners are getting in trouble with their lenders later on. They insist on being notified if a homeowner is in arrears in meeting his or her mortgage payments or if the homeowner has actually defaulted. This notification requirement sometimes takes the form of a contractual obligation on the homeowner's part to provide the sponsor with timely notification of mortgage difficulties. More often, such notification is the lender's responsibility. This may be arranged informally between the lender and sponsor, with the former agreeing to notify the latter if a homeowner is in arrears. It is more common, however, for a notification requirement to be incorporated into the mortgage itself, so that the lender is required to notify the sponsor whenever a homeowner is more than 60 days in arrears (or has already defaulted).[100]

*Option 3: Opportunity to cure.* Notification is sometimes accompanied by an opportunity to cure. Beginning on the date that a sponsor receives notice of a homeowner's default, the sponsor may be granted a specified period of time, lasting anywhere from 30 to 90 days, to cure the default on the homeowner's behalf. During this period, the lender must delay the start of foreclosure. If a cure is effected, the mortgage remains in place on the same terms as before. If the cure is not effected during the standstill period, the lender may foreclose on the mortgage and gain possession of the property.

*Option 4: Opportunity to acquire the property after foreclosure.* Some sponsors of shared equity housing – especially those employing the CLT model – have negotiated mortgages where the sponsor is granted an opportunity to buy back a shared equity home when a lender has gained possession through foreclosure or acceptance of a deed in lieu of foreclosure. The price may be set by a market-based appraisal or may be limited to the total of the outstanding balance of the mortgage on which the homeowner defaulted plus any costs incurred by the lender in conducting the foreclosure. Similar to the opportunity to cure, the sponsor is given a specified period of time in which to exercise this right to purchase. Once this period has passed, the lender is free to sell to any buyer who is willing to pay the lender's asking price.

*Option 5: Opportunity to control the property after foreclosure.* There is one other financing control, which is unique to the CLT. When a CLT home is financed, the property that is mortgaged is the title to the home and the right to occupy the underlying land (i.e., the leasehold estate).[101] If a lender forecloses on a CLT home, the CLT retains ownership of the land, along with the right to collect a lease fee for the use of its land. This lease fee can be increased to a level equivalent to a market-rate rent if the lender resells the home to an "ineligible," upper-income buyer. Because the difference between the "affordable" lease fee charged to a income-eligible household and a market-level lease fee can be considerable, the CLT may be in a strong bargaining position vis-à-vis the new owners of a foreclosed property. On occasion, an "ineligible" homebuyer has allowed the CLT to reinstate resale controls over a foreclosed property purchased from a lender in exchange for a lower monthly lease fee.

## X. Resale Formula

A resale formula establishes an upper limit on the price for which a shared equity home may be resold – whether it is sold back to a sponsoring organization or sold directly by one homeowner to another.[102] Because this price ceiling tends also to limit the amount of equity which the owner of this home may realize when transferring property that may have greatly appreciated in value, these resale formulas are sometimes referred to as "limited equity" or "limited-appreciation" formulas. These terms are used interchangeably.

In an unrestricted market situation, where no contractual limitations are placed on how a home is priced or what "profit" an owner may pocket when reselling his or her property, the owner's equity is the market value of the home minus any debt that encumbers that home. Equity, in other words, is the amount of money an owner receives when reselling a house, condominium, or co-op share(s) after all of the debt secured by a mortgage (or other liens) has been paid off. In the case of a just-purchased home, the owner's equity is usually equal to the cash downpayment (although "sweat equity" is sometimes included as well). Over time, as monthly mortgage payments are made, the homeowner's equity

increases: slowly at first, when payments consist mainly of interest; then more rapidly, as an increasing portion of each payment is applied to the principal.

The homeowner's equity may also increase because of appreciation in the market value of the home. Although some of this gain may be due to the homeowner's personal contributions of money and labor in improving the property, the bulk of it is usually caused by societal factors outside of the homeowner's control, including public investment in the city as a whole, private investment in the surrounding neighborhood, changes in the regional economy, and changes in the way that residential real estate is regulated, financed, and taxed. In a rising real estate market, the buildup of such socially created equity tends to grow more quickly than the buildup of equity derived from the amortization of debt or a homeowner's improvements to his or her property. When the home is resold, all of the equity is claimed by the owner.

In a shared equity home, by contrast, the homeowner's ability to accumulate equity and to remove equity when reselling the home is limited, a direct result of the property being conveyed to another owner for a price determined not by the market but by a formula to which the first owner consented when buying the home. Most resale formulas are designed to allow homeowners to recoup their original downpayment, to recover any payments that have gone toward the amortization of their mortgage, and to realize a reasonable return on the homeowner's investment.[103] What constitutes a return that is "reasonable" or "fair" is a subject of considerable debate among the organizers and supporters of shared equity housing. It is also a source of much of the variation to be found in the way that different formulas calculate what the resale price of a shared equity home should be.

Most resale restrictions, it should be emphasized, do not guarantee that a homeowner will receive the formula-determined price. The formula establishes a ceiling, not a floor. If the property's condition has deteriorated, if the property's value has plummeted, or if the formula itself has failed to keep the property's resale price within financial reach of the targeted, income-eligible population, there may be no prospective buyers who are willing or able to pay the formula-determined price. A shared equity home will sometimes change hands, therefore, for a price that is lower than the price that is set by the resale formula.[104]

Although the goal of every resale formula is essentially the same – namely, to limit increases in the price of housing to a level that future homebuyers at a targeted level of income can afford – there are many ways to achieve this goal. There are four generic approaches to setting the resale price of a shared equity home – and many variations of each. These generic formulas include the following:

- Indexed formulas, which link upward adjustments in the original purchase price of a house, condominium, or co-op shares to changes in a specified index.
- Itemized formulas, which adjust the original purchase price by adding (or subtracting) specific factors that increase (or decrease) the value of the home.
- Appraisal-based formulas, which upwardly adjust the original purchase price by giving the owner a specified percentage of market appreciation, as measured by appraisals that are done at the time of purchase and at the time of resale.
- Mortgage-based formulas, which determine the resale price by calculating the maximum amount of mortgage financing that a homebuyer at a targeted level of income can afford at current interest rates – current, that is, on the day the home is offered for resale.

None of these formulas is specific to a particular type or tenure of shared equity housing. The same resale formula that one discovers in an affordability covenant appended to the deed of a single-family house, for example, might also be found in the ground lease underlying a multiunit condominium or in the bylaws establishing a limited equity housing cooperative. By the same token, a very different resale formula might be found in each.

*Option 1: Indexed formulas.* This class of resale formulas starts with the price paid by the buyer of a

shared equity home and then adjusts that price upwards by the same percentage that a particular index has risen during the owner's occupancy.[105] Every indexed formula has essentially the same form: purchase price + [purchase price x percentage change in index] = resale price. The design of these formulas hinges on the resolution of two issues: what the initial purchase price should be and which index should be used in determining the eventual resale price.

The first issue arises only in situations where public or private subsidies, used to bring a home within the financial reach of a low-income homebuyer, have been structured as either a deferred loan or outright grant to the homebuyer. Instead of covering a portion of the developer's costs and thus reducing the price that is charged to the homebuyer, such subsidies are included in the home's purchase price. The home is purchased, in other words, for a market-rate price that is made "affordable" because additional resources have been put into the buyer's hands. In such situations, the sponsoring organization must decide whether the index used in its resale formula will be applied to the full purchase price or only to the unsubsidized portion of that price (i.e., the market price minus the subsidy, the amount the buyer actually paid). Application of the index to the full purchase price will obviously result in a windfall for the departing homeowner and a higher, less affordable price for the incoming homebuyer.

The second issue is pertinent to every indexed formula: which index will drive the price? The possibilities are many. All begin with a simple choice between allowing the resale price to be driven by some measure of household incomes or by some measure of housing costs. On the income side of the ledger, the index most commonly used in shared equity homeownership programs has been the percentage change in Area Median Income (AMI). Although frequently adopted in response to governmental regulations requiring that homes subsidized through a particular federal or state program remain affordable for a specified number of years, the changing AMI is widely used even when this index is not a governmental requirement. The AMI is relatively objective, readily available, periodically updated, and geographically specific to each MSA. It has the added advantage of familiarity. Nonprofit providers of low-income housing are accustomed to thinking of affordability in terms of units that can be accessed by households at a specified level of AMI, adjusted for household size.

Many affordable housing advocates believe, however, that the AMI does a poor job of gauging the actual earnings and buying power of lower-income households, especially in a depressed inner-city neighborhood or on the rural fringe of a metropolitan area ringed by affluent suburbs. These suburbs skew the average upwards, undermining the accuracy and relevancy of the AMI when used as a measure of what a region's poorer residents can afford.

Instead of tying the future price of their resale-restricted, owner-occupied housing to changes in AMI, therefore, a number of shared equity programs and projects have chosen a different index of income. Some have used an index of blue-collar wages; some have created an index out of changes in the level of welfare payments; and some have tracked changes in the base salaries of schoolteachers, nurses, firefighters, or other "key workers," using this index to determine the future prices of resale-restricted, owner-occupied housing.

On the *cost* side of the ledger, the index most commonly employed in shared equity homeownership has been the Consumer Price Index (CPI). Here, too, however, many variations have been tried. Some sponsors of shared equity housing have used only the housing component of the CPI. Others have constructed an index using the selling prices of existing housing included in the Multiple Listing Service in their city or town. There are also cases of sponsors combining an index of income with an index of cost to determine the resale price of a shared equity home. A regional coalition of 15 towns in King County, WA, for example, use an indexed formula that inflates the original purchase price of a shared equity home by the average of (1) the percentage increase in the AMI and (2) the percentage increase in the average selling price of houses and condominiums in their county.[106]

*Option 2: Itemized formulas.* Itemized formulas adjust the resale price by adding or subtracting specific factors

that affect the value of the owner's investment in the home. In contrast to indexed formulas, which make adjustments to the *purchase price* of a home, itemized formulas proceed by making direct adjustments to the *owner's equity.* The resulting resale price becomes the sum of the owner's equity accumulated to date, adjusted for inflation and excessive damage (if any), plus the amount of mortgage debt that is still outstanding at the time of resale.

Itemized formulas vary widely in the factors they include and the ways they apply these factors in augmenting or reducing the value of an owner's equity. The discussion that follows is a menu of the factors most commonly used in itemized formulas around the country.

*Value of improvements.* Value added to a home through later capital improvements that are made by the owner can be treated as an addition to the owner's equity. Measuring this value is one of the more important and more difficult features of this type of formula. It is *important* because it can have a large impact on the price that a homeowner can receive when selling a home and that a homebuyer must pay when buying that home. It is *difficult* because calculating the value of homeowner-initiated improvements depends on fine distinctions that are not easily drawn.[107]

*Maintenance, repairs, and depreciation.* Itemized formulas do not normally add the value of maintenance and repairs to an owner's equity unless they also subtract a certain amount for "wear and tear" (depreciation). If the formula provides for depreciation at an annual rate of 2%, for instance, the home's resale price is potentially diminished at this rate each year, but the formula can counterbalance this factor by adding to the owner's equity the value of maintenance and repairs. The inclusion of a depreciation factor in the formula eliminates the need to make difficult distinctions between repairs and improvements, since both will increase the owner's equity. The question of whether a piece of work maintains or adds to the base value is no longer relevant. The disadvantage of this approach, however, is that it requires the sponsoring organization to keep track of an accumulating number of small pieces of work over a span of many years.

*Penalties for unusual damage.* Regardless of whether an itemized formula includes a standardized depreciation factor, it may impose a separate penalty for extreme damage to the home caused by the homeowner. Such penalties typically subtract from the resale price paid to the departing homeowner an amount equal to the cost incurred by the sponsor in repairing the damage or rehabilitating the home after the homeowner's departure.

*Inflation adjustments.* Many itemized formulas include inflation factors, intended to protect the value of a homeowner's investment against gradual erosion caused by the increased price of goods and services in the general economy and the reduced purchasing power of a dollar. Sponsors who choose to include such a factor in their resale formula, hoping to insulate their homeowners against the effects of monetary inflation, face the same sort of choice as those who employ an indexed formula: they must decide which index will drive their inflation adjustment. The Consumer Price Index remains the most common inflator used in itemized formulas, but some sponsors of shared equity housing have turned to indices chosen from the income side of the ledger, such as the AMI. A few have chosen to use a fixed-rate inflation factor, inflating the value of a homeowner's equity by a fixed percentage every year, like 2%, 3%, or 5%.

Regardless of which inflation factor is used, it should be said again that this factor is applied not to the purchase price of the property (as it is in an indexed formula), but to the amount of equity actually accumulated by the owner to date, including the owner's original downpayment, the principal retired from the homeowner's mortgage, and the value of any capital improvements credited to the homeowner's account since purchasing the property.

*Option 3: Appraisal-based formulas.* Appraisal-based formulas establish the resale price of a shared equity home by adding to the original purchase price a certain percentage of any increase in the property's value.[108] This appreciated value is measured by a pair of market appraisals: one conducted at the time of purchase; the other conducted at the time of resale. A stipulated percentage of the property's appreciated value is added to the original purchase price and claimed by the homeowner at resale.[109] The appraisal-based formula may stipulate 10%,

25%, 50%, or a percentage that increases with the length of time that a home is occupied by the same owner. For instance, a formula may set the homeowner's share of appreciation at 10% if the property is sold in less than two years, and may then increase the percentage by 1% for each additional year of ownership, until a maximum percentage is reached, say 50% of the appreciation.[110]

Two other variations are worth noting: appraisal-based formulas that give homeowners a credit for capital improvements made at a homeowner's expense; and appraisal-based formulas that give homeowners a share of appreciation for only that portion of their property's value they initially purchased. The first is a true hybrid, combining features of itemized and appraisal-based formulas. At resale, the homeowner receives not only a percentage of the property's appreciation, but a dollar-for-dollar return of his or her investment in making specified (and preapproved) improvements while living in the home. For example, suppose a shared equity home that appraised for $100,000 is purchased for the same amount, subject to a resale formula that allows the homeowner to claim 25% of the property's appreciation plus a credit for capital improvements. Five years after moving into the home, the owner adds a bedroom, costing $20,000. Two years after that, when the homeowner decides to sell, the home is appraised at $160,000. The resale price paid to the departing homeowner would be calculated as follows: the homeowner would be paid the property's original purchase price ($100,000), plus the cost of adding a bedroom ($20,000), plus 25% of the property's appreciation in excess of the capital improvement (25% x $40,000 = $10,000). The resale price, in this example, would be $130,000.

A second variation assumes that a homeowner's share of a property's appreciation should be proportionate to the size of the homeowner's initial investment in purchasing that property. Homeowners who invest more at the front end receive more at the back end. This type of appraisal-based formula is most commonly found in situations where large public or private subsidies are being used to write down the purchase price of some resale-restricted homes, but not others. The resale price is determined by dividing the property's actual purchase price by its appraised value at the time of initial purchase and then multiplying that percentage by the property's appreciation, as measured by market appraisals done at purchase and resale. The product of this calculation, representing the owner's share of appreciation, is added to the original purchase price to determine the resale price.[111] Consider, for example, two resale-restricted homes, each appraising for $120,000. One home is sold to a low-income household at the heavily subsidized price of $60,000. The other home is sold to a moderate income household at a more lightly subsidized price of $96,000. Five years later, both houses appraise for $140,000; both houses are resold. The resale price of the first house, where the low-income homeowner initially purchased 50% of the property's value, would be $70,000 [50% x $20,000 appreciation + $60,000 purchase price]. The resale price of the second house, where the moderate-income homeowner purchased 80% of the property's initial value, would be $112,000 [80% x $20,000 appreciation + $96,000 purchase price].[112]

*Option 4: Mortgage-based formulas.* Mortgage-based formulas calculate the resale price of a shared equity home on the basis of the amount of mortgage financing that a homebuyer at a specified income could afford at interest rates available at the time of resale. Unlike the three types of formulas discussed above, mortgage-based formulas establish the resale price without reference to either the homeowner's investment or the property's appreciation. The focus is exclusively on preserving the home's affordability for a future homebuyer of modest means. Ensuring a fair return for the homeowner who is selling the home is not a consideration.

The following factors go into designing a mortgage-based formula, each of which must be spelled out in precise detail in the contractual mechanism enforcing the property's affordability:

- The income level (as a percentage of AMI, adjusted for household size) for which the housing is being kept affordable and for which monthly mortgage payments are to be calculated.
- The monthly carrying costs to be charged to the income-eligible homeowner (typically, principal,

interest, taxes, insurance, and any association, condo, or ground lease fees).
- The percentage of the homeowner's income to be allocated to paying these monthly carrying costs (typically, 30% or 35%).
- The percentage of the purchase price to be covered by mortgage financing (typically, 95%).
- The type of mortgage for which monthly payments are to be calculated (typically, a 30-year fixed-rate mortgage).
- The benchmark that will be used in determining the interest rate for this type of mortgage, a rate that is current on the day the property is resold.

A mortgage-based formula ensures that, regardless of what happens to household incomes or mortgage rates, any housing which is made affordable for households at a targeted level of income today will remain affordable for households at the same level of income tomorrow. If incomes go up, the resale price goes up, along with the seller's equity. If interest rates go up, the resale price goes down, along with the seller's equity. A downside to this particular resale formula is that any significant increase in mortgage interest rates between the day a homeowner buys a shared equity home and the day that home is resold can, in effect, wipe out most of the equity which the seller hoped to receive.

It should be noted that when the resale price is pegged to a particular income, say 80% of AMI, the resale price will be "unaffordable" for any household earning less than 80% of AMI. If the goal is to produce and preserve shared equity housing for households earning less than 80% of AMI, therefore, a mortgage-based formula must set the resale price to be affordable for a percentage of AMI significantly lower than 80% – say, 70% or 60% of AMI.

## XI. Resale Process

In designing the process by which a shared equity home is transferred from seller to buyer, a sponsor must address three basic issues: how eligible homebuyers will be brought to the deal; what route the property's title will take in passing from one owner-occupant to another; and what role the sponsor will play in monitoring and managing the property's transfer. Each offers a range of options.

### How Are Eligible Buyers Brought to the Deal?

In some programs, the sellers of shared equity homes are expected to find their own buyers, credit-worthy households who can meet whatever eligibility standards have been established for their housing.[113] It is more common, however, for a third party – e.g., the public agency that subsidized the housing, the nonprofit that developed it, or the CLT or housing cooperative that oversees it – to maintain a waiting list of eligible households from which the seller must select a buyer. Alternatively, any one of these outside parties may retain an exclusive right to choose a specific buyer for every property offered for resale or retain a preemptive right to purchase the property themselves, reselling it soon after to a buyer of their choice.

### How Is the Resale-Restricted Property Passed From Seller to Buyer?

Shared equity homes are often transferred directly from seller to buyer, with the latter contractually assuming all of the use and resale restrictions that were binding on the previous owner. A more circuitous route is also common. At every resale, a third party may insert itself into the chain of title. The property passes from the hands of the seller into the hands of this third party before being conveyed to another low-income homebuyer. This provides the intermediary with an opportunity to rehabilitate the property, if needed, before it is occupied by another homeowner. It also gives the intermediary greater control over the pricing of the home and the selection of its occupants.[114]

### What Is the Sponsor's Role In Managing the Resale Process?

Trusting that use and resale restrictions contained in a covenant that runs with the land are "self-enforcing," some sponsors of shared equity housing play a minimal role in monitoring or managing the resale process. They may insist on being notified when a resale-restricted home is resold but otherwise do nothing to ensure that the property is actually sold to an "eligible" buyer at an

"affordable" price. As previously suggested, this can be a recipe for disaster, with self-interested sellers and self-interested buyers devising ingenious ways to circumvent restrictions that no one is watching very closely. Most sponsors get much more involved in the resale process, however, performing one or more of the following tasks:

- Inspecting the property prior to resale
- Rehabilitating the property prior to resale
- Calculating the resale price
- Marketing the property
- Certifying the eligibility of prospective buyers
- Maintaining a waiting list of eligible buyers
- Selecting/recommending prospective buyers
- Arranging affordable financing for prospective buyers
- Counseling and orienting prospective homebuyers
- Overseeing disclosures to prospective homebuyers
- Purchasing and reselling the property.

As a general rule, CLTs and cooperatives play a larger role in the resale process, taking on many more of these tasks than do the sponsors of deed-restricted homes. Conversely, some CLTs and some cooperatives do very little to monitor and manage the resale process and some sponsors of deed-restricted homes do a lot. It all depends on the program's design.

## XII. Enforcement

All of the design features discussed so far describe the internal content of the durable controls regulating the use and resale of a homeowner's property. The final feature, discussed below, describes the external enforcement of these controls. Nearly every form of shared equity homeownership contains both a legal and administrative framework for compelling the homeowner's compliance with these contractual obligations. In designing this framework, four issues must be addressed.

- What contractual means will be used to impose and enforce these controls?
- What organizational entity will be given responsibility for monitoring and enforcing the homeowners' compliance with these controls?
- How will the financial cost of monitoring and enforcement be covered, ensuring that whoever is assigned this administrative responsibility will remain on the scene for as long as these controls are designed to last?
- How will the inherent intrusiveness of monitoring and enforcement be managed, balancing the homeowner's desire for autonomy with the sponsor's need for compliance?

### OPTIONS FOR IMPOSING AND ENFORCING CONTRACTUAL CONTROLS

Restrictions on the use and resale of shared equity housing are imposed through a variety of means. Although each of these contractual mechanisms was mentioned previously in Chapter Two, during our review of the three basic models of shared equity homeownership, they can now be discussed in a bit more detail. Special attention will be given to the different procedures for remedying violations of these contracts, committed ether during the homeowner's tenure or during the property's transfer.

*Covenant attached to a deed.* Sometimes recorded as a free-standing contract, "affordability covenants" are more commonly appended to the deed for a particular parcel of residential property; they "run with the land." In a condominium project, where individual homeowners do not possess a divided interest in the underlying land, covenants are attached to the unit deeds.[115] The covenant's primary purpose is the preservation of affordability by setting the price for which a shared equity home may be resold, defining the eligibility of its subsequent buyers, and determining the process by which the property will change hands from one owner to the next. But, as we have already seen, resale restrictions are not the only controls that commonly encumber shared equity housing. Deed covenants typically contain a variety of use restrictions as well, regulating the occupancy, legacy, maintenance, improvement, and/or financing of this housing. Remedying a homeowner's violation of use restrictions contained in a covenant can be difficult,

however, because the enforcement of deed covenants is not well established in law. The party imposing the restrictions could pursue court action to compel compliance, but the outcome may be uncertain. In practice, it is rare to find a sponsor doing much more than chiding or threatening a homeowner for violations of a covenant's use restrictions that occur during a homeowner's tenure. Monitoring and enforcement are more likely to occur at resale. Those sponsors who optimistically believe deed covenants to be "self-enforcing" entrust others, in effect, with the task of forcing compliance. They assume that lawyers for the lender or buyer or, perhaps, a company being asked to insure the property's title will discover the covenant's use and resale restrictions and warn the parties that the title will be clouded if the property is sold in violation of the covenant's restrictions. Other sponsors take a more hands-on approach. They insert into their covenants the right to review and to approve both the price for which a home is resold and the eligibility of the household who is buying the shared equity home. They reserve the right to approve financing and refinancing of the home. They may also give themselves (or their designee) the first right to purchase the home for the restricted price that is determined by the resale formula contained in the property's covenant.

*Covenant attached to a mortgage.* The same restrictions on the use and resale of a shared equity home that are found in most affordability covenants are sometimes embedded, instead, in a home's mortgage. This may be the primary mortgage, securing most of the financing needed to purchase a house, townhouse, or condominium, or a subordinate mortgage, securing a public or private subsidy put into the property in order to make it more affordable for a homebuyer of modest means.[116] The duration of these restrictions is limited to the duration of the mortgage. When the debt is repaid and the mortgage retired, the restrictions are extinguished.[117] While they remain in effect, however, any violations of the restrictions encumbering the mortgaged property become grounds for the lender to declare the homeowner in default. The lender's ultimate remedy, should a homeowner fail to cure a default and persist in violating use or resale restrictions embedded in the mortgage, is foreclosure.[118]

*Use and resale restrictions embedded in a ground lease.* In the community land trust model, the contractual vehicle through which use and resale controls are imposed on the leaseholder/homeowner is the ground lease. The same ground lease, imposing the same restrictions, can be used for a detached, single-family house, an attached townhouse, or, with some modification, any other type of housing located on a CLT's land, including condominiums, cooperatives, or manufactured housing sited in a "mobile home park."[119] The owner of the underlying land – i.e., the lessor – monitors the use of the land, as well as the occupancy, legacy, maintenance, improvement, and financing of the shared equity home located on the land. The collection of monthly lease fees and periodic inspections of the premises, allowed by the lease, provide the landowner with windows on the lessee's performance. Procedures for remedying violations are embedded in the lease. As a last resort, the landowner may pursue a summary process for lease enforcement. In cases of serious and repeated default, the landowner may evict the lessee, repossess the premises, repurchase the home, and find a new homeowner/leaseholder for the property.

*Resale restrictions embedded in co-op documents; use restrictions embedded in a proprietary lease.* In a limited equity housing cooperative, the formula restricting the resale price of co-op shares usually appears in three different documents: in the bylaws of the cooperative housing corporation; in the provisions of the subscription agreement; and on the face of the stock certificates themselves. Restrictions on the use of cooperative housing are contained in the proprietary lease, executed between the cooperative housing corporation and each of the cooperative's owner-occupants.[120] Violations of the proprietary lease can be handled through monetary penalties and a range of other sanctions imposed by the cooperative, up to and including eviction. Violations of the resale restrictions are rare, since cooperatives either repurchase a member's share(s) each time a cooperative apartment is sold or exert direct control over setting the price and approving the occupants for every resold unit. The cooperative is in a position, if a homeowner is discovered attempting to circumvent the resale controls, to block the transfer.

## OPTIONS FOR MONITORING CONTRACTUAL CONTROLS

The sponsor of shared equity housing – whether the nonprofit organization that constructed it, the public agency that funded (or mandated) it, or the CLT or LEC that manages it – will often retain responsibility for monitoring the contractual controls that the sponsor originally imposed. Alternatively, this responsibility may be delegated to another party. When the controls that encumber a shared equity home are believed to be "self-enforcing," however, there may be no monitoring at all.

*No monitoring; due diligence review at resale.* There are sponsors who neither accept responsibility for monitoring the contractual controls they imposed on resale-restricted housing nor delegate that responsibility to someone else. They assume, instead, that any violations of the use and resale restrictions that encumber the property will be discovered during the customary due diligence review by buyers, lenders, insurers, and their attorneys whenever the property is resold. Since violations of this sort would cast a cloud over the property's title and impede the property's resale, the threat of discovery should be sufficient to compel compliance. No additional monitoring is believed to be needed – so none is done.

*Tripwire notification.* Other sponsors of shared equity housing take a similar hands-off approach, trusting that most homeowners will abide by the covenants and conditions that encumber their property. They neither regularly monitor the use and resale of the housing they helped to create, nor periodically inspect the property. Most of the time, they do not intervene in the property's transfer from one homeowner to another. They do respond, however, when alarms are sounded. This may happen when a homeowner violates a municipality's health, fire, zoning, or building codes. It may happen when a homeowner defaults on his or her mortgage. It may happen when a homeowner's insurance is canceled or utilities are shut off. It may happen when a prospective buyer complains that the price being charged for a resale-restricted home is too high. Notified of any of these events, the sponsor can investigate – and compel – a homeowner's compliance with conditions in the property's covenant, ground lease, or proprietary lease.[121]

*Monitoring by an administrative entity internal to shared equity housing.* Most limited equity cooperatives and most community land trusts retain the right to inspect the homeowner's premises on a regular basis. They may be a party to the homeowner's mortgage, with a right to notification and intervention if the homeowner is in default. They may be listed as a co-insured party on any policy insuring the homeowner's property against loss from fire, damage, or liability. They may be notified, as co-owner of the homeowner's property, of any violations of municipal codes. They repurchase a homeowner's property at resale or, if the home is transferred directly from one homeowner to another, they review and approve all subsequent buyers. In addition, because LECs and CLTs collect monthly fees from their homeowners, they have a built-in early-warning system for learning when a homeowner is in financial distress. All of these mechanisms, which are intrinsic to the models themselves, give the LEC and CLT the means and the motivation to closely monitor the homeowner's compliance with contractual controls over use and resale.

*Monitoring by an outside party.* Monitoring may also be done by an administrative entity that does not share in the ownership and operation of a resale-restricted home. This outside party may have the same right to inspect the premises as an LEC or a CLT and may require the same kinds of notifications. Although LECs and CLTs generally do their own monitoring and enforcement, using their own staff, they sometimes contract out these administrative duties to another entity. This is a common practice in larger cooperatives, where a property management company is hired by the board to run the project on the members' behalf. This outside party may also be granted the same preemptive right as the LEC or CLT to insert itself into the resale process, calculating the resale price, approving prospective homebuyers, and even repurchasing the property at the formula-determined price.

## OPTIONS FOR COVERING THE COST OF MONITORING AND ENFORCEMENT

Any organizational entity assigned responsibility for monitoring and enforcing the use and resale restrictions

on shared equity homes must be able to perform these tasks for as long as the controls are designed to last. The durability of the monitor, in other words, must match the durability of the controls. There is, of course, no way to guarantee that this monitoring organization will survive, nor that it will always have the capacity or the will to fulfill its responsibilities. The best that can be done is to have both a back-up plan, should the designated organization fail, and a reliable means of covering the costs of monitoring and enforcement for anyone on whom these responsibilities fall.

The back-up most commonly employed in shared equity housing is to plan for a successor from day one. Either included in the bylaws of the organization assigned responsibility for monitoring and enforcement or inserted into the grantee agreement governing the investment of public funds in the housing administered by this organization, there is a contingency plan for another entity to take over these responsibilities should the organization be unable or unwilling to play its assigned role. Many grantee agreements give the governmental agency that provided these funds a durable right to take over ownership or control of the grantee's property if the latter is unable or unwilling to enforce the agency's requirements for maintaining the property's occupancy, eligibility, and affordability for lower-income households.[122]

Regardless of who is assigned responsibility for monitoring and enforcing the durable controls on shared equity housing, initially or eventually, some provision must be made for covering the cost of staffing these administrative tasks. The four most widely used options are as follows.

*Revenues are externally provided by a state or municipal government.* The cost of monitoring and enforcing contractual controls over the use and resale of shared equity housing is often covered by the governmental agency that originally sponsored, subsidized, or mandated that housing. The agency may use its own staff or may fund another entity – a nonprofit organization, a cooperative housing corporation, or even a for-profit management company – to fulfill these responsibilities on its behalf.

*Revenues are internally generated by other operations.* In larger organizations, offering a wide mix of services and products, the cost of monitoring and enforcing contractual controls over the use and resale of shared equity homes is sometimes covered by revenues arising out of the organization's other activities. For example, part of the interest earned from a revolving loan fund or part of the rents collected from a commercial project may pay for a portion of a staff person's time in overseeing the organization's residential portfolio. In the parlance of the private sector, the income from one line of business is used to subsidize the administrative costs of another line of business.

*Revenues are internally generated by resale-restricted homes on a monthly basis.* In many shared equity housing programs, the cost of monitoring and enforcement is covered by the homeowners themselves. Part of a co-op member's monthly carrying charge, for example, is used by the LEC to oversee the use and resale of the cooperative's apartments. Part of the monthly land lease fee paid by a CLT homeowner/leaseholder is used by the CLT to administer the ground lease and to manage the resale of these limited equity homes. It is less common for the owners of deed-restricted homes to be charged any sort of fee to cover the cost of monitoring and enforcement. On occasion, however, where a municipal sponsor is providing low-interest loans for the purchase of deed-restricted homes, the sponsor may add a point or two to the rate to cover not only the sponsor's costs of servicing the loan but the sponsor's costs of monitoring and enforcing the affordability covenant attached to the home.

*Revenues are internally generated by resale-restricted homes at resale.* Collecting a monthly fee to cover the administrative costs of monitoring and enforcement has a major drawback. Low-income homeowners may not be able to afford it. Month by month, they may not have the money to spare for even a small administrative charge. Many sponsors of shared equity housing wait until a property's resale, therefore, to recover a portion of their own costs for monitoring and enforcement. They either collect an administrative fee from the seller, subtracted from the first homeowner's equity, or they collect it from the buyer, adding it to the second homeowner's purchase price. Which approach is taken depends, in large measure, on which formula is being used to establish the resale

price and what balance the sponsor is trying to strike between an adequate return for the seller and an affordable price for the buyer.[123]

These options are not mutually exclusive. Larger organizations, overseeing a sizable portfolio of resale-restricted housing, may employ all four, while depending very little on external grants to cover their costs of monitoring and enforcement. Smaller organizations may employ only one, depending entirely on external grants until their portfolios grow large enough to begin generating internally the kinds of revenues needed to cover the long-term cost of stewardship.

## BALANCING AUTONOMY AND COMPLIANCE

When monitoring and enforcing the contractual controls of shared equity housing – and when designing these controls in the first place – there is a balance to be struck between autonomy and compliance. There is a choice to be made between leaving people alone to enjoy the independence that has traditionally come from owning a home versus overseeing the behavior of these newly minted homeowners to make sure they actually use and resell their housing in accordance with the sponsor's covenant, ground lease, occupancy agreement, or bylaws.

Some sponsors of shared equity housing err on the side of autonomy, limiting their oversight and intervention to a bare minimum. A silent partner in the property's operation, they do little to monitor how the property is used. Indeed, they may be virtually invisible until the property is resold, surfacing only long enough to guarantee its transfer to an eligible buyer at an affordable price. Some sponsors err on the side of compliance, regularly inspecting every shared equity home, while closely monitoring its occupancy, maintenance, financing, subletting, and improvement. An active partner in the property's operation, they are a constant and obvious presence in a homeowner's life. Other sponsors – the majority, perhaps – chart a middle course, zigzagging between these two extremes. They tilt toward autonomy when designing some of the programmatic components of shared equity housing. They tilt toward compliance when designing the others.

The challenge for every LEC, CLT, and developer of deed-restricted housing lies in finding a regulatory balance that is both acceptable and sustainable. If they intrude too much on a homeowner's privacy and prerogatives, applying too heavy a hand in monitoring and enforcing the contractual controls that govern the use and resale of a homeowner's property, they can compromise the attraction and satisfaction of the homeownership experience they are trying to provide. If they intrude too little, monitoring and enforcing with too light a touch, they can lose the owner-occupancy, income-eligibility, and long-term affordability they are trying to protect.

# IV. Policy

## The Role of State and Local Government in Supporting or Impeding the Expansion of Shared Equity Homeownership

***Public policy has been a key factor in determining where alternative models of homeownership will thrive. Below the federal level, the three policies most favorable to the growth of shared equity homeownership are durable affordability, subsidy retention, and equitable taxation. Where these policies are lacking, resale-restricted housing tends to be in short supply.***

Shared equity homeownership, in its many permutations, would barely exist in the United States without the commitment of hundreds of nonprofit, community-based organizations that persisted in championing these alternative models of tenure during years of little understanding and less support from major institutions of the market and the state. Most of the heavy lifting of developing, marketing, and managing resale-restricted, owner-occupied housing is still being done by nonprofits today, although more of the burden has been slowly shifting to the shoulders – and pocketbooks – of the public sector. Indeed, much of the growth in shared equity homeownership in recent years is due to the increasing number of city, county, and state officials who are incorporating these models into their own policies, programs, and plans. Especially in jurisdictions with inclusionary housing programs, where regulatory mandates or financial incentives have induced private developers to create affordably priced housing for lower-income homebuyers, these models have become a widely used administrative tool for preserving homeownership gains that government has worked so hard to create.

Despite the recent growth in governmental support for shared equity homeownership, there are still many cities and states where public policy remains more a hindrance than a help. The density allowed for residential development is too low to produce low-cost housing of any kind, or the regulatory burden is too high. The subsidies provided by a city or state are too meager to bring homeownership within the reach of low-income households. The political will of local officials is too feeble to resist the battle cry of "not in my backyard" when neighbors oppose low-cost housing or insist on affordability concessions when developers propose high-cost housing.

Impediments like these are not peculiar to shared equity homeownership, however. They discourage the development of any housing intended for persons of modest means, regardless of tenure or type. They shall not concern us here, therefore, despite the impact they can obviously have on how much (or how little) resale-

restricted, owner-occupied housing will be produced in a particular locale. Our focus, instead, shall be on a trio of public policies at the state and local levels that systematically support – or, in their absence, systematically impede – the expansion of shared equity housing: durable affordability; subsidy retention; and equitable taxation.

In jurisdictions where these policies are present, the number of resale-restricted, owner-occupied homes tends to be large – and growing. In jurisdictions where these policies are lacking, usually because they have been preempted by policies far less favorable to shared equity homeownership, the number of resale-restricted homes tends to be small or nonexistent. Absent a policy of durable affordability, cities and states either impose temporary restrictions on the use and resale of publicly assisted housing – or require none at all. Absent a policy of subsidy retention, cities and states either steer their support for affordable housing away from nonmarket models of homeownership or structure their support in ways that cripple the performance of these models. Absent a policy of equitable taxation, cities and states force the owners of resale-restricted homes to pay property taxes not only on the equity they own, but also on equity they can never claim for themselves, eroding the hard-won affordability created by the jurisdiction's own subsidies, incentives, or mandates.[124]

Durable affordability, subsidy retention, and equitable taxation are treated as separate policies in the present chapter, despite their definitional and operational interdependency. Durable affordability is dependent on public subsidies that remain in place across multiple transfers of owner-occupied property and on public taxes that take into account multiple restrictions on a property's use and resale. Subsidy retention is dependent on models of tenure that perpetuate the affordability of housing assisted with public dollars and on methods of taxation that do not grab back with one hand what government has given with the other. The equitable taxation of resale-restricted housing depends, in most jurisdictions, on convincing a local assessor that the affordability purchased with public dollars will contractually endure for many years. These policies should be inseparable. Too often, they are not, making the production and preservation of shared equity housing for persons excluded from the conventional homeownership market a pair of tasks that are seldom easy and sometimes impossible.

## Durable Affordability

Whether in cities and regions with housing markets that have long been strong or in areas where real estate prices have been historically stagnant but are now soaring, low-cost housing left completely exposed to market forces can quickly become unaffordable for persons of modest means. Confronting this market reality, a growing number of cities and states are now insisting on a quid pro quo for their support. They will use their dollars or powers to promote the production of housing that low-income or moderate-income homebuyers can afford, but the eligibility, occupancy, and affordability of that housing must be contractually preserved for a number of years. The most pressing policy issue then becomes how long these contractual controls should be made to last.

"Forever" has been the policy of some cities and states. These jurisdictions require permanent affordability for any low-cost housing created through the investment of public resources, the provision of regulatory incentives, or the imposition of inclusionary mandates.[125] Such a policy virtually guarantees the expansion of shared equity homeownership because deed-restricted homes, community land trusts, and limited equity (or zero equity) cooperatives become priority recipients of a jurisdiction's investment in affordable housing. The only places where the amount of shared equity housing has not dramatically increased under a policy of permanent affordability have been jurisdictions in which public subsidies for affordable housing have been reserved primarily for rental housing, or where public intervention has been ineffective in encouraging the production of low-cost housing of any kind.[126]

Many cities and states that have made a commitment to lasting affordability, however, have been reluctant to declare their allegiance to permanent affordability. They want contractual controls over the eligibility, occupancy, and affordability of any publicly assisted, owner-occupied housing to extend across multiple resales, enduring for a period of time, but they

consider 40 years, 30 years, 20 years, or even 10 years to be "long enough." Once that period is over, all controls are lifted and the housing is pushed into the stream of commerce.[127] Some jurisdictions with time-limited controls, on the other hand, manage to achieve something close to "forever" by restarting the clock every time a home is resold. Since many homeowners are likely to put their resale-restricted property up for sale sometime before the contractual controls are due to lapse, even a control period lasting less than the 30-year standard we have adopted here in defining shared equity homeownership may permanently preserve most of a jurisdiction's publicly assisted owner-occupied housing.

Depending on the length of this mandated period of affordability and depending on how decontrol is handled, a policy that falls short of permanent affordability can still support the expansion of shared equity homeownership. The locality's pool of resale-restricted housing may eventually start leaking units into the market, but any policy that nudges public resources toward housing with affordability controls that endure across multiple resales is going to favor the development of alternative models of tenure.

Far less favorable is a policy of short-lived controls or, as still happens in many cities and states, a policy of no controls at all. Affordable housing for low-income homebuyers is created through the dollars or powers of government, but its affordability is quickly lost, disappearing at the first resale. Within such a policy regime, deed-restricted housing, community land trusts, and limited equity cooperatives may be eligible for public support, but they are at an enormous disadvantage. They must compete for scarce public resources against for-profit (or nonprofit) developers of market-rate housing who do not need to concern themselves with the durability of the materials they are using or the sustainability of the administrative structure they have put in place to oversee the eligibility, occupancy, and affordability of the housing they have produced. They must compete for attention and funding from public officials who may be biased against any controls over housing that is owner-occupied, no matter how much assistance these homes may have received from public coffers.

This bias runs wide and deep. The longer controls are made to last, moreover, and the closer they come to being permanent, as they are in models like the CLT and LEC, the stiffer the resistance among many public officials to offering them sanction or support. Their resistance is sometimes an expression of personal prejudice or political ideology, where any government-imposed encumbrance on private property is considered unacceptably "un-American." But the reluctance to insist on long-term controls over the resale of publicly assisted, owner-occupied housing may also be rooted in more practical concerns. Three tend to trouble public officials the most: the economic impact, the administrative burden, and the legal enforceability of resale restrictions that endure for many years.[128]

The economic impact feared by some public officials is that long-term controls over the use and resale of owner-occupied housing may prevent the improvement of low-income neighborhoods and impede the advancement of low-income people. Although limited equity cooperatives and community land trusts have been effectively used in a number of cities to revitalize neighborhoods with a history of disinvestment,[129] durable affordability is sometimes seen as a policy that is incompatible with community building in distressed inner-city areas. Similarly, although shared equity housing not only expands access to homeownership for low-income households and allows homeowners to increase their equity, under most resale formulas, durable affordability is sometimes seen as a policy that is incompatible with wealth building among impoverished households.

Those who advocate for durable controls have taken several different tacks in attempting to address these economic concerns. Some have focused on persuading public officials to take a longer view of neighborhood change, urging them to plan for the day when public and private reinvestment eventually succeeds in turning a neighborhood around, unleashing market forces that can threaten lower-income residents with displacement. Others have focused on persuading public officials to take a wider view of wealth creation. While conceding that resale controls impose a cap on the equity windfalls that

individuals can sometimes reap in a rapidly rising real estate market, advocates for durable affordability point out that the amount of wealth actually accumulated by the low-income owners of most market-rate housing is usually less abundant and less secure than is commonly supposed. They argue, too, that boosting many households into homeownership via shared equity housing, allowing each an opportunity for a modest gain in wealth, is a wiser policy than helping fewer households to accumulate more. Some wealth is better than no wealth, in other words, and community wealth is as important as individual wealth in bringing prosperity to lower-income communities.[130]

Another way of addressing the economic impact that resale controls are feared to have on market building and wealth building has been to peg the duration or restrictiveness of these controls to market conditions prevailing in different areas of a city or state. In New Jersey, for example, the state's housing trust fund has often required resale controls to last longer on assisted projects located in hot-market suburbs than in cold-market inner cities. In Chicago, municipal officials have backed the development of a citywide community land trust that will monitor and enforce long-term affordability restrictions on publicly assisted, owner-occupied housing in dozens of neighborhoods. Different neighborhoods will have different resale formulas, however. The ground leases or deed covenants used in hot-market neighborhoods will contain a resale formula that heavily caps the amount of equity which a homeowner may remove on resale. The leases or covenants used in cold-market neighborhoods will contain a resale formula that lightly caps a homeowner's equity – or imposes no cap at all until the real estate market turns upward in that particular locale.

Other public officials have been less concerned about the economic impact of durable controls than about the administrative burden of monitoring and enforcing these controls over a long period of time.[131] Unwilling to have government bear that burden, they impose short-term controls or none at all. To their credit, they acknowledge a reality too often ignored by public officials who readily attach long-term affordability covenants to the deeds of publicly assisted, privately owned housing and then blithely assume them to be self-enforcing. To be worried about the stewardship of occupancy, eligibility, and affordability restrictions that endure for many years is to admit, at least, that somebody must monitor these durable controls if they are to have much effect. The question is who that "somebody" should be. As noted in the previous chapter, the party that imposes these contractual controls does not need to be the same one that monitors and enforces them; nor does that party need to bear unilaterally all the costs of monitoring and enforcement. These responsibilities can be shared, so they do not fall on government alone. It is reasonable, therefore, for public officials to concern themselves with how long-term compliance with publicly mandated controls over hundreds or thousands of units of privately owned housing is to be assured – and how the cost of compliance is to be covered. It is less reasonable to reject durable controls out of hand simply because somebody must watch over them for 30 years or more.

Finally, some public officials have been reluctant to embrace a policy of durable affordability because of an expressed concern for the legal enforceability of long-term controls. Their concern has a basis in two common law principles known as the "rule against perpetuities" and the "rule against unreasonable restraints." These doctrines, established in England during the 16th and 17th centuries, were adopted because of public sentiment against the concentration of land in the hands of an entrenched aristocracy.[132] They were intended to prevent the "dead hand of the past" from reaching too far into the future, constraining what later generations could do with their property. Simply stated, the rule against perpetuities says that controls over a property's future disposition, including its use and resale, may not extend longer than the lifespan of someone who is alive at the time the controls are imposed (a "life in being"), plus 21 years. The rule against restraints says that controls that unreasonably impede or discourage a property's owner from conveying his or her ownership interest are prohibited.[133]

Ironically, the motivation for encumbering shared equity housing with durable use and resale restrictions is rooted in the same sentiments that gave rise to the rule

against perpetuities and the rule against unreasonable restraints over three centuries ago. Thus:

> The purpose of long-term affordability restrictions is similar to the purpose behind these old real estate doctrines. The restrictions retain housing affordability for low-income persons so that housing opportunities will be available to a wider income range of the population. They also tend to avoid concentration of housing ownership. It is therefore perverse that the very doctrines that were intended to undo concentration of land in the hands of a few are now possible barriers to expanding housing opportunities. (CHAPA, 1989: 3)

On the face of it, these barriers look rather formidable, since shared equity homeownership would seem to run afoul of both doctrines. After all, the disposition of privately owned housing is controlled for a very long period of time. These controls determine not only how private property may be used, now and in the future, but also to whom that property may be conveyed, how it may be conveyed, and how much the seller may charge. Some forms of shared equity housing try to limit forever the price for which an ownership interest may change hands, as well as the pool of income-eligible households who may purchase that ownership interest.

There is no question, therefore, that shared equity housing imposes restraints on the conveyance ("alienation") of residential property, restraints which endure across successive generations of homeowners. Nevertheless, the critical legal issue here is not whether such restraints exist, but whether they are reasonable. If the imposition and enforcement of these durable controls over the use and resale of privately owned housing can be shown to accomplish a worthwhile purpose – serving, in particular, a broader public interest – they can withstand legal challenge. As Debbie Bell concluded several years ago, when reviewing the relevant case law on this subject, "Limited-price preemptive rights are generally upheld when they serve a legitimate purpose or promote significant public policies, and when the person giving the option received some benefit in return."[134]

To buttress the argument that resale-restricted, owner-occupied housing does indeed serve a public purpose, supporters of shared equity homeownership have sometimes pursued an administrative agenda, persuading a state or municipal agency to make a public commitment to durable affordability – and to models that achieve it – through its comprehensive housing plan, its housing trust fund, or other homeownership assistance programs. For example, the policy of "forever housing" that was instituted by Connecticut's Department of Housing in the late 1980s (but later dismantled by a more conservative administration) declared that "state-assisted housing should be permanently removed from the speculative market" and proceeded to prioritize funding for limited equity housing cooperatives, community land trusts, mutual housing associations, and other nonmarket models designed to preserve "the long-term affordability of housing generated by public funds."[135] Affordability requirements lasting anywhere from 40 years to the useful life of the assisted property can also be found in selected housing programs of the City of Boston and the Boston Redevelopment Authority (Collins and White, 1994), in the municipal housing trust funds of Ann Arbor, Cambridge, Berkeley, San Francisco, Los Angeles, and Washington, DC, and in the state housing trust funds of Ohio, Oregon, Rhode Island, and Vermont (Brooks, 2002, 1994).

Supporters of shared equity homeownership have also pursued a legislative agenda in several states, aimed at removing common law barriers to the expansion of housing encumbered with long-term restrictions over its use and resale. They have won statutory sanction either for durable affordability controls in general or for specific models of shared equity housing that incorporate a commitment to durable affordability into their purpose and structure. The affordable housing covenants allowed by state law in Maine, the "housing subsidy covenants" allowed in Vermont, and the affordable housing restrictions allowed in Massachusetts are examples of the first.[136] Cooperative housing statutes enacted by Minnesota, Massachusetts, California, and Vermont are examples of the second.[137]

Legislative support for durable affordability and for models that achieve it has taken other forms, as well.

Since 1979, for example, California's Redevelopment Law has required the state's 400-plus community redevelopment agencies to set aside at least 20% of their tax-increment funds for low- and moderate-income housing. In addition, redevelopment agencies are required to ensure that 15% of all new housing produced within redevelopment areas is affordable to low- or moderate-income households. Long-term affordability restrictions must accompany all housing that is assisted with these set-aside funds or that is counted towards an agency's housing production goals. Rental housing must remain affordable to targeted income groups (very low, low or moderate income) for a period of at least 55 years. Homeownership housing must remain affordable for at least 45 years.[138]

Even in states where public policy, legislative action, or judicial opinion has tended to run in favor of durable controls over the use and resale of residential property, the common-law bias against long-term restraints has led attorneys for the sponsors of shared equity housing to be extra-cautious in crafting the covenants, ground leases, and corporate documents that contain such controls. They have also been careful in fashioning procedures for the sale of shared equity homes that ensure full disclosure and full acceptance of these controls by prospective homebuyers.[139] Documenting the voluntary nature of this contractual arrangement, in which all parties are fully aware of what they are getting into and what they are giving up, may be the simplest way of answering questions about the enforceability of the durable controls imposed by CLTs, LECs, and other sponsors of shared equity housing. A number of courts have upheld durable, fixed-price options, as Debbie Bell has pointed out, "simply because it was clear that the party granting the option intended to create it, understood the agreement, and received something in return."[140]

All of these administrative, legislative, and lawyerly contrivances are designed to increase the defensibility of durable controls should they ever be challenged. In point of fact, no cases have been found where durable controls over the use and resale of publicly assisted, privately owned housing have been invalidated by a state or federal court. Attorneys advising the sponsors of deed-restricted housing, community land trusts, and limited equity cooperatives have become increasingly confident that, with proper precautions, the longevity of contractual controls encumbering these homes can be legally sustained.

In the end, it is not the law that poses the greatest barrier to a policy of durable affordability. Nor, for that matter, is it the economic impact or administrative burden of durable controls. These practical concerns can usually be addressed. Much harder to address are personal, political, or ideological biases that have little to do with the practicality or impracticality of shared equity homeownership. In too many jurisdictions, the main impediment to a policy of durable affordability is the animus of key individuals toward any publicly mandated controls over private property lasting longer than a handful of years. They may reluctantly endorse short-term controls to prevent the quick turnover of publicly assisted, owner-occupied housing, but stubbornly resist more lengthy controls that preserve the availability and affordability of such housing for successive generations of lower-income homebuyers. They are morally convinced that durable affordability is bad.

## Subsidy Retention

Durable affordability and subsidy retention are two sides of the same coin. Both policies preserve the public's stake in affordable housing. Both policies rely on nonmarket models of homeownership to make preservation a reality. They differ only in their emphasis. Durable affordability is focused on the way that private property is used and priced, demanding that homes assisted by government in the present remain affordable for lower-income homebuyers in the future. Subsidy retention is focused on the way that public money is invested, demanding that resources provided by government in the present remain available to lower-income homebuyers in the future. Since neither can be fully realized without the other, these policies should be inseparable. In many places, they are not. There are many jurisdictions in which a public commitment to durable affordability is not accompanied by a parallel commitment to subsidy retention. Because the latter is often treated as a separate policy, it must be discussed that way.

The high rate of homeownership in the United States is a product, in large measure, of public policy. For

decades, prospective homeowners have feasted on a veritable banquet of public largess designed to lower the land costs, construction costs, rehabilitation costs, mortgage rates, downpayments, infrastructure, insurance costs, and property taxes for this favored form of tenure. Indeed, in any given year, the total amount of governmental subsidies made available to homeowners, across a broad spectrum of household incomes, usually exceeds by a wide margin everything that is spent by all levels of government in producing and assisting rental housing for lower-income people.[141]

What happens to these homeowner subsides when an assisted property is resold? To the extent they are identifiable, quantifiable, and recoverable, they are treated in three different ways by the public or quasi-public agencies that provided them; that is, they are subject to three different policies determining their disposition. Subsidies are either given away to the homeowner (subsidy removal), taken back by the agency (subsidy recapture), or locked into the home, stabilizing its price for future generations of lower-income homebuyers (subsidy retention). Only the last is entirely compatible with shared equity homeownership. It is also the policy least commonly found among the homeownership programs of most cities and states.

Under a policy of subsidy retention, subsidies are granted or loaned to a sponsoring organization to reduce the purchase price of houses, townhouses, condominiums, or cooperative apartments to a point where they are affordable to homebuyers of modest means.[142] A house that costs a nonprofit organization $150,000 to build, for example, might be subsidized with a $50,000 grant that the organization has received from the local municipality, allowing the nonprofit to sell the completed house for $100,000 to a low-income homebuyer. In exchange for this public assistance, the homebuyer agrees to limit the home's resale price, limiting the amount of equity that he or she will receive from the sale. The subsidies invested in making homeownership affordable for one generation of low-income homebuyers are thus retained in the housing itself, keeping it affordable for the next generation of low-income homebuyers. A new infusion of public dollars will not be needed every time a publicly assisted home is resold. The subsidy is preserved, along with the affordability of the assisted property. Since deed-restricted homes, community land trusts, and cooperative housing are the vehicles by which such a policy can be implemented, these models become priority recipients of public largess whenever and wherever the disbursement of homeownership assistance is guided by a concern for retaining subsidies and maintaining the affordability these subsidies buy.

Subsidy retention, however, is either completely omitted from the housing assistance programs of many cities and states or only applied to the public's investment in rental housing. Even in cities and states where subsidy retention is a key ingredient of the jurisdiction's homeownership programs, the policy is often applied only to monies disbursed through an isolated program, like a housing trust fund. All other subsidies for the acquisition or rehabilitation of owner-occupied property are subject to a very different policy – either subsidy removal or subsidy recapture (see Figure 4.1 on next page).

Prior to the 1970s, the prevailing policy governing the public's subsidization of homeownership in the United States was subsidy removal. For many cities and states, it remains the dominant policy today.[143] Typically structured as a grant or non-amortizing loan to an individual homeowner, such subsidies enable lower-income homebuyers to purchase market-priced homes that would otherwise be beyond their means. When these publicly assisted, owner-occupied homes are resold, they are priced and purchased for whatever the market will bear. If the property has held its value or increased in value, the seller may claim whatever public subsidies were put into the home, along with any appreciation that occurred between the home's initial purchase and later resale. Removed by the seller, these subsidies are no longer available to the next buyer. Another investment of public funds will usually be needed, if a subsequent homebuyer of modest means is to be able to buy the same home or one like it.

Subsidy removal may be reasonable in weak-market neighborhoods, cities, and regions where the affordability gap between housing costs and household incomes is either small or shrinking. It may be sustainable – or, at least, acceptable – in jurisdictions where an abundant stream of public dollars is available to replenish the pool of subsidies being lost as assisted homes are resold for market

**Figure 4.1**
**Removal, Recapture, or Retention: Three Policies for the Subsidization of Owner-Occupied Housing**

| | SUBSIDY REMOVAL | SUBSIDY RECAPTURE | SUBSIDY RETENTION |
|---|---|---|---|
| **Recipient of the subsidy** | Individual homeowner | Individual homeowner | Corporate sponsor, usually a community development corporation, CLT, or LEC |
| **Form of the subsidy** | Grant or non-amortizing loan to the homeowner | Loan to the homeowner | Grant or loan to the corporate sponsor |
| **Price paid by homeowner at initial purchase** | Total development cost or appraised value of the home | Total development cost or appraised value of the home | Total development cost, minus the amount of the subsidy |
| **Price paid to homeowner when home is resold** | Market value of the property | Market value of the property | Price determined by a resale formula contained in a deed covenant, ground lease, or an LEC's bylaws and shares |
| **Disposition of subsidy at resale** | Subsidy pocketed by the seller | Subsidy recaptured by the lender (in whole or in part) and then re-loaned to next low-income homebuyer | Subsidy retained in the property, lowering its purchase price for the next low-income homebuyer |
| **Price paid by next homebuyer** | Market value of the property | Market value of the property | Formula-determined price paid by the corporate sponsor in repurchasing the home from the first owner |
| **Need for additional investment of public funds (in a rising market) to assist the next low-income homebuyer** | More public investment is always needed, since none of the original subsidy is available to close the gap between the buyer's income and the property's increased market value | More public investment is usually needed, since recaptured funds are seldom sufficient to close the gap between the buyer's income and the property's increased market value | More public investment is not needed, if the resale formula has performed as expected in maintaining an affordable price for the next low-income homebuyer |

prices, or where an abundant supply of low-cost land and newly constructed starter homes are available to replenish the pool of assisted homes being lost to the market.

These are not the circumstances of most localities, however. The affordability gap, for them, has been growing greater, not smaller. The per-unit subsidy required to boost a lower-income household into homeownership has been growing larger, while the budgets of the public agencies charged with providing such assistance have become tighter. Buildable land has become less plentiful and more expensive, pushing the price of even the smallest starter home far beyond what a lower-income household can afford.

In the face of these harsh realities, an increasing number of cities and states have come to regard subsidy removal as a wasteful, unsustainable policy that cannot be justified either fiscally or politically. Subsidy recapture has been steadily taking its place. Public subsidies, under this latter policy, are loaned to lower-income homebuyers, helping them to purchase market-priced homes that would otherwise be beyond their means. These loans are structured in a variety of ways. They may be short-term

or long-term. They may be interest-bearing or not. If interest is charged, the rate may be as low as 1% per annum or nearly as high as a market-priced mortgage. The payment of the loan's interest and principal may occur on a monthly basis or both may be deferred until the home is resold. The lender may require not only repayment of principal at the time of resale, but payment of a share of the property's appreciation as well. The loan itself, under many subsidy recapture schemes, may be gradually forgiven, reducing the homeowner's indebtedness by a specified percentage each year of occupancy until the loan eventually disappears. What is true in every case, however, is that the homes receiving such assistance are priced and purchased at resale for whatever the market will bear. The original subsidy, if not forgiven by the time of resale, is wholly or partially recaptured by the public agency that provided it. Recaptured funds are then re-loaned to another lower-income homebuyer, assisting in the purchase of another market-priced home within the agency's service area.[144]

Subsidy recapture is widely considered an improvement over subsidy removal. It does in fact go further in protecting and recycling the public's investment. Less money is needed from government coffers to subsidize future homebuyers, since some funds are recaptured from previously assisted homeowners when they eventually resell their subsidized homes. But subsidy recapture suffers from some of the same problems as the policy it replaced. In a rising market, the affordability purchased by the public's investment is immediately lost when an assisted home is resold. Its price rises instantly to a market value that few low-income households may be able to pay. To purchase that home, or another like it, a low-income homebuyer will need the same sort of subsidy that boosted the first low-income household into that home. Funds recaptured from the first homeowner can be used for part of that subsidy, but they will seldom be enough to bring homeownership within the financial reach of another low-income homebuyer in markets where housing prices are increasing faster than household incomes (see Figure 4.2). Recaptured funds must be regularly supplemented, therefore, by a fresh infusion of public capital at every resale of a subsidized home. Otherwise, fewer and fewer first-time homebuyers are going to be assisted as the subsidy pool is gradually drained and eventually depleted. The flaw in this arrangement has been succinctly described by Cohen (1994: 110):[145]

> Many cities are faced with the troubling reality that they cannot maximize the return on their investment without minimizing the affordability of the housing they subsidize. Conversely, they cannot ensure the affordability of the subsidized housing, as it changes hands at an unrestricted price, without assisting fewer and fewer buyers or adding more and more dollars to their original investment. This is the paradox at the heart of subsidy recapture: the preservation of the public subsidy is incompatible with the preservation of affordability, and vice versa.

Although this paradox is readily acknowledged by many public officials whose cities or states employ subsidy recapture, they continue the policy nonetheless. Their reasons are varied, and sometimes valid. Their real estate market may be depressed enough to allow recaptured funds to close most of the affordability gap for the next low-income homebuyer.[146] Their municipality may be rich enough to replenish the pool of homeowner subsidies whenever it dips below an acceptable level. They may have an abundance of cheap land within their boundaries in need of redevelopment or an indifference to sprawling development beyond their boundaries, either of which may provide plenty of newly constructed, low-cost starter homes to replenish the pool of assisted homes that are lost to the market on resale. Or they may simply be ideologically resistant to any form of tenure other than market-rate homeownership. Whatever the reason, recapture, not retention, remains the guiding policy.

There are many other places where policies of recapture and retention coexist within the same jurisdiction, usually to the detriment of the latter. Either funding is provided on parallel tracks, with some subsidies subject to recapture and some subsidies retained in the housing, or funding is provided to resale-restricted housing under terms and conditions dictated by a policy not of subsidy

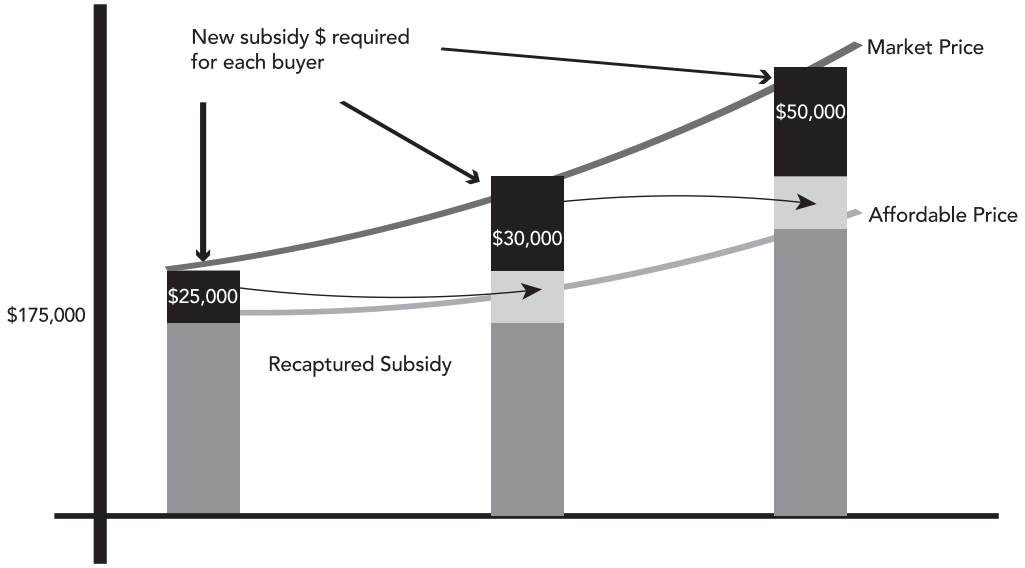
retention, but of subsidy recapture. Neither is favorable to the expansion of shared equity homeownership.

Parallel programs create a marketing nightmare for shared equity housing. Offered to a limited pool of creditworthy, income-eligible homebuyers are two competing opportunities for publicly assisted homeownership. Under the recapture program, prospective homebuyers are provided with a public subsidy to purchase homes with few restrictions on use and no restrictions on resale, except for a requirement to return a portion of the subsidy when the home is resold. Under the retention program, prospective homebuyers are provided with a public subsidy to purchase homes with multiple restrictions on both the use and resale of this shared equity housing.[148] If the size of the subsidy is similar and the price of the homes is similar, none of the resale-restricted homes will be sold until all of the unrestricted homes have been sold. Shared equity homeownership, under a parallel policy universe, is set up to fail.[149]

The uncomfortable coexistence of recapture and retention is also found among many jurisdictions that have firmly embraced resale-restricted models of tenure, but continue to structure their investments in affordable housing in a manner more appropriate to subsidy recapture or subsidy removal. The policy has changed; the procedures have not. Thus, instead of subsidies being granted or loaned to a project's sponsor, they are granted or loaned to individual homeowners. Instead of the subsidies being locked into the assisted property, staying with the housing across successive resales, they are recaptured by the public funder or removed by the homeowner at resale. Instead of relying on a grantee agreement or loan agreement between the funder and the sponsor of shared equity housing to convey the subsidies

**Figure 4.2**

**Reinvestment of Recaptured Subsidies Still Leaves a Growing Affordability Gap**[147]




Imagine a family whose monthly income allows them to qualify for a $170,000 mortgage. If they could put $5,000 down, they would be able to afford a $175,000 house. But if the only suitable houses available cost $200,000, they would need $25,000 in homebuyer assistance. Five years later, when they move, their house might sell for $250,000. With that money they would have to repay the remaining mortgage balance (say, $160,000) and repay a portion of their silent second mortgage (say, $20,000), which would leave them $70,000 in equity. The local government could then reinvest that $20,000 to help another family. The problem is that to help a family at the same income level buy the same kind of house now costs $50,000 instead of $25,000, because prices have risen so fast. The government would have to put in another $30,000 to make this same house affordable. And the next time it will cost even more. And the time after, even more. Even with subsidy recapture, over time, larger and larger amounts of subsidy are required to keep the same housing affordable to the same kinds of families.

– and instead of relying on deed covenants, ground leases, and corporate documents contained in the models themselves to enforce the funder's requirements for occupancy, eligibility, and affordability – the funder executes a regulatory agreement with each and every homeowner, ignoring the regulatory framework that is already in place. In short, models that retain subsidies are often forced into administrative boxes designed for subsidy recapture or subsidy removal. At best, this squanders the strengths of the shared equity models that a city or state has decided to support. At worst, it interferes with the sponsor's efforts to produce, mortgage, and market such housing.

A declared commitment to shared equity homeownership on the part of public officials becomes an empty gesture without a uniform policy (and consistent procedures) for retaining the public's investment. Absent a policy of subsidy retention, cities and states either steer their funding for affordable housing away from deed-restricted homes, community land trusts, and limited equity cooperatives, or structure their funding in ways that cripple both the production and performance of these alternative models of tenure.

## Equitable Taxation

Rarely is the owner-occupied property developed through a community land trust, through a limited equity cooperative, or under a deed-restricted regime removed from local tax rolls.[150] The owners of shared equity homes, like the owners of market-rate homes, pay property taxes. That is true even for homeowners who lease land from a CLT. Since they have sole possession of their leasehold for 99 years, they bear sole responsibility for paying whatever local taxes are levied against both the house they own and the land they occupy.[151]

Although expected to pay and willing to pay their fair share of local property taxes, the owners of shared equity housing are too often required to pay much more. In assigning values and levying taxes, many local assessors take little or no account of the fact that shared equity housing is heavily encumbered with durable restrictions on subletting, resale, and use – restrictions that significantly constrain a property's marketability and profitability. The owners of shared equity homes are frequently forced to pay taxes not only on value that is theirs, but also on value they can never claim for themselves.

Consider, for example, a deed-restricted house produced through a municipality's inclusionary zoning program that is sold to a lower-income household for $85,000, despite appraising for $210,000 at the time of purchase. If the house appreciates at an annual rate of 7%, its appraised value after five years would be nearly $295,000. The maximum resale price that an affordability covenant would allow the homeowner to charge, however, should she decide to move after five years, could be as low as $94,000.[152] Note that the homeowner, in this hypothetical example, only buys 40% of the property's value when purchasing the house. Five years later, she may claim as her own only 32% of the property's value, were she to resell the house. If the municipal assessment of her property does not take into account either its below-market purchase price or its restricted resale price, the homeowner will be taxed as if 100% of this value belonged to her. By her fifth year of occupancy, in this particular case, she would be forced to pay property taxes on $201,000 of value she does not own.

This can be an enormous barrier to the expansion of shared equity housing, especially in places where the market value of residential real estate is rapidly rising and where property taxes are keeping pace. Shared equity homes continue to sell and resell for prices well below their market value, but they are taxed as if their owners are realizing the same gains as any other homeowner. At a certain point, no matter how affordable the cost of purchasing these resale-restricted homes may have been, taxes that are pegged to the property's market value will render the cost of holding these homes unaffordable for persons of modest means.

A more equitable approach to taxing resale-restricted property is necessary if the affordability of shared equity homes is to be respected and protected, rather than eroded. Jurisdictions that would tax such property more fairly must address two questions:

- What is the value of shared equity housing when it is entered on the tax rolls, considering that

these properties are encumbered with durable restrictions on both the equity a homeowner may earn when these properties are resold and the income a homeowner may earn if the properties are sublet (if subletting is even allowed)?

- How is this value adjusted over time – i.e., what is the rate of increase in the assessed value of a shared equity home – considering that the property must be resold for a formula-driven price that may be far below its market value?

In jurisdictions where shared equity housing is being developed on land that is leased from a community land trust, a third question must be addressed:

- What is the value of land that is owned by a CLT when it is entered on the tax rolls, considering that this land is encumbered with a 99-year-lease, this land will generate only modest fees for the laowner during the term of the lease, and this land will be immediately leased again to another low-income homeowner whenever it reverts to the CLT?

There is neither uniformity nor consistency in the myriad ways in which cities and states have answered these questions when attempting to cope with forms of tenure that do not fit neatly into familiar boxes for the valuation and taxation of residential real estate. An observation made several years ago about the taxation of CLT homes is applicable to every form of shared equity homeownership:

> Local taxation of land and buildings within the price-restricted domain of the community land trust is a crazy-quilt pattern of rational innovation, political calculation, and irrational expediency. The variability from one state to another, even from one jurisdiction to another within the same state, is extraordinary. (Davis, 2001: 44)

Because of the sheer variety of the approaches that different jurisdictions have taken in setting the value of resale-restricted housing, in adjusting its value over time, and in setting the value of land that is owned by a CLT, it is difficult to propose a "best practice" that would be acceptable, defensible, and effective in every locale.[153] It is possible only to sketch out a few general guidelines, suggesting what the equitable taxation of resale-restricted property should look like.

## SETTING THE VALUE OF RESALE-RESTRICTED HOUSING

Ideally, the assessed value of a shared equity home should reflect the durable controls that have been contractually imposed on the use and value of this property. Its value should reflect the property's value to the owner. Because these encumbrances reduce the value that an owner can derive from his or her property, its assessed value should be significantly lower than that of a similar property not so encumbered. The taxes a town can expect to collect, accordingly, should be lower as well. This was, in fact, the reasoning of the Appellate Division of the New Jersey Superior Court in the 1989 case of *Prowitz v. Ridgefield Park Village* (568 A.2d 114) in considering whether deed-restricted housing should be taxed at a reduced rate. Upholding the lower taxation of residential property encumbered with an affordability covenant, the Court stated:

> The deed restriction limiting resale price constitutes a patent burden on the value of the property, not on the character, quality or extent of title. It is, moreover, a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State's woefully inadequate inventory of affordable housing.

Although the opinion of a New Jersey appellate court is not binding on the courts of other states, the reasoning behind the *Prowitz* decision has been echoed elsewhere. Outside of New Jersey, the question of whether resale restrictions impose a "patent burden on the value of the property," which must be recognized in taxing shared equity housing, has sometimes been settled

by a state court,[154] sometimes by a state legislature,[155] and sometimes by a state board of equalization.[156] More often, however, it has been left to local assessors to decide for themselves whether to recognize the affordability restrictions contained in the covenants, ground leases, or bylaws of shared equity housing and what the encumbered value of these homes should be. Although the majority opinion, emerging among the nation's assessors, is that a shared equity home should be valued and taxed on the basis of the restricted price for which the property is actually sold (and resold), many local assessors still refuse to accept such a below-market valuation when entering resale-restricted housing onto their tax rolls.

## ADJUSTING THE VALUE OF RESALE-RESTRICTED HOUSING

Prices rise not only for market-rate homes, but also for resale-restricted homes. It follows that tax assessments should increase as well. Resale prices seldom rise as fast for the latter, however – which is, of course, what resale-restricted housing is all about. The formula-determined price of a shared equity home, under most resale formulas and under most conditions, will tend to rise on a trajectory that is lower and flatter than the trajectory followed by market-priced homes without resale controls. The argument made to local assessors by the sponsors and owners of shared equity housing, therefore, is that post-purchase adjustments to the assessments (and taxes) of shared equity homes should take these long-lasting controls into account.

Assessors have only been amenable to this argument when the sponsors or owners of shared equity housing have been able to convince them that the restriction on the resale price of their homes (and, for that matter, the restriction on any rental income that owners could collect from subletting their homes) is a durable, enforceable encumbrance. Different assessors have established different tests in this regard, but most have insisted on the following requirements:

- Affordability restrictions are embedded in covenants, ground leases, or other contractual documents recorded in the land records.
- Affordability restrictions are not revocable during the term of a homeowner's occupancy.
- Affordability restrictions are not amendable during the term of a homeowner's occupancy.
- Affordability restrictions encumber individual properties.
- Affordability restrictions endure for many years.[157]

For properties that meet these requirements, the challenge confronting a local assessor is to determine the actual impact of these affordability restrictions on the rising value of shared equity homes. Many assessors adjust their valuation of shared equity homes already on their tax rolls by looking to the prices actually paid for comparable resale-restricted homes that have recently changed hands within the same neighborhood. Some assessors calculate the maximum price for which a shared equity home could have sold, based on the resale formula appearing in the home's deed covenant or ground lease, and adjust the home's value accordingly.[158] Some assessors simply determine that the assessed value of shared equity homes should rise at a rate that is 10% lower, 25% lower, 40% lower, or some other percentage below whatever the increase might be for market-rate homes. Although these percentages sometimes look suspiciously like a number that was grabbed out of thin air, they at least represent an acknowledgment that the formula-driven price of a shared equity home is rising at a rate that is lower than the market-driven price of homes without resale controls.[159]

## SETTING THE VALUE OF LAND OWNED BY A CLT

Ideally – and logically – the assessed value of a CLT's land should never be more than the "leased fee value," i.e., the economic value that is retained by the landowner. This amount is essentially the net present value (NPV) of the income stream which the CLT can collect from a parcel of land in monthly fees over the term of the lease, plus the discounted value of any proceeds the CLT might realize when the land reverts to the CLT at the end of the lease. CLTs tend to charge lease fees that are below their

land's fair rental value.[160] Many charge lease fees of merely a few dollars a month. Thus the NPV of these lease fees, for most CLTs and for most CLT land, is extremely low. So too is the land's reversionary value, since any leasehold that comes back into a CLT's possession is immediately re-leased on similar terms to another low-income homeowner. The CLT typically derives no economic value from this transaction, aside from the lease fees themselves. Acknowledging these realities, the city assessor in Albuquerque, NM, for one, has concluded that the land held by the Sawmill Community Land Trust has no value at all. Other assessors in other communities have made NPV calculations of a CLT's income stream and concluded that a CLT's land does have a taxable value, but one that is far below that of lands that are leased for a market-rate rent. On Orcas Island, for example, in Washington State, the local assessor has decided that the encumbered value of the lands owned and leased to individual homeowners by the OPAL Community Land Trust is 40% lower than their market value. CLTs in New Hampshire, by contrast, are paying property taxes on values that are based on the highest-and-best use of a CLT's land. Assessors there have taken account of neither the below-market lease fees being charged to CLT homeowners nor the distant and miniscule reversionary value of these lands, a policy that has slowed the development of CLT housing throughout the state.

Despite the burden and barrier that market-based taxation can pose for shared equity homeownership, many advocates for deed-restricted housing, community land trusts, and limited equity cooperatives in New Hampshire and elsewhere have been reluctant to push for a fairer approach to valuing and taxing their properties. Developing housing for low-income households, they worry, is already controversial enough without adding a volatile issue like equitable taxation to the mix. While it is hard to fault the political calculations of these local activists, who are often fighting the good fight for affordable housing in hostile environments against enormous odds, their refusal to confront this long-term threat to the continuing affordability of shared equity housing seems terribly shortsighted. It is akin to the refusal of many public officials to confront the loss of publicly provided subsidies and publicly produced affordability in their homeownership programs because they are worried what the political fallout might be if they insisted on locking both in place. The failure to press for the equitable taxation of resale-restricted housing has this in common with the failure to press for subsidy retention and durable affordability. All three seem like good politics, at least some of the time. All three are bad policy, nearly all of the time.

# V. Performance

## Claims and Criticisms of Shared Equity Homeownership

*Shared equity housing is designed to balance the competing interests of individuals and community. Five pairs of benefits are commonly claimed for these alternative models of tenure, creating a multifaceted set of standards by which the performance of shared equity homeownership may be judged. The evidence for and against these claims is sometimes convincing and sometimes inconclusive, contradictory, or non-existent. Where evidence is lacking, the stage is set for future research.*

Shared equity homeownership, in all of its forms, is designed to achieve an equitable and sustainable balance between the legitimate interests of individuals who own and occupy residential property and the legitimate interests of a larger community. Between these pairs of interests, there is an unavoidable tension, for "what one individual does to secure his or her interests may interfere with the interests of other individuals or the community; and what the community does to secure its interests may interfere with the interests of individuals."[161] The challenge taken up by shared equity housing is to manage this tension over a lengthy period of time in a manner that is fair to both parties.

The performance of shared equity homeownership is to be judged, therefore, by its success in delivering – and balancing – a handful of benefits that are commonly claimed for these nonmarket models of tenure by the public officials who support them, the private lenders who finance them, and the community activists who promote them: affordability, stability, wealth, involvement, and improvement. There is an individual dimension and a community dimension to each, with some benefits accruing primarily to the owner-occupants of resale-restricted homes (individual benefits) and some benefits accruing primarily to the surrounding neighborhood or, more grandly, to society as a whole (community benefits). These property-based benefits are pursued in relation to one another. Every benefit realized by an individual homeowner has a corresponding benefit realized by the larger community. Neither is pursued in isolation from the other. Neither is advanced at the expense of the other. By design, they march in tandem, benefiting individual and community alike.

These complementary pairs become the yardstick by which the performance of shared equity homeownership may be measured, evaluating how close it has come to doing what it promises to do. Not every model of resale-restricted, owner-occupied housing delivers every benefit to the same degree, nor does it promise to do so. Not every model performs the same way every time in every place. By using a common measure, however, it is possible to dis-

cern not only how a particular model performs under different conditions, but also how the sector as a whole performs relative to the publicly subsidized rental housing, the market-priced rental housing, and the market-priced homeowner housing which surrounds it. The five pairs of benefits which shared equity housing is most frequently claimed to deliver and to balance may be summarized as follows:

## Shared Equity Homeownership: Claims

| Performance Standard | Individual | Community |
|---|---|---|
| AFFORDABILITY | Access to homeownership is *expanded* for current homebuyers of modest means. | Access to homeownership is *preserved* for future homebuyers of modest means. |
| STABILITY | Security of tenure is enhanced. The risks of homeownership are reduced. | Neighborhood stability is increased. |
| WEALTH | Personal assets are enlarged. | Community assets are preserved. |
| INVOLVEMENT | Social bonds and collective action are nurtured *within* shared equity housing. | Civic engagement is expanded *outside* of shared equity housing. |
| IMPROVEMENT | Personal mobility is enabled. | Community development or community diversity is promoted. |

Another yardstick is available to us in evaluating these nonmarket models of homeownership. Rather than viewing them exclusively through the positive lens of their supporters, they may also be viewed through the negative lens of their critics. Claims for the worth of shared equity housing are widely contested. These models are sometimes attacked for doing too little to promote the interests of the individuals who occupy them. They are sometimes attacked, from the other flank, for doing too little to promote the interests of community. The most common of these criticisms are the following:

## Shared Equity Homeownership: Criticisms

| Performance Standard | Individual | Community |
|---|---|---|
| AFFORDABILITY | It is not the form of tenure which expands homeownership for low-income households, but the type of housing and the level of subsidy. | Helping low-income households to become homeowners is high-cost and low-volume. Public subsidies should be put into rental housing instead. |
| STABILITY | Occupants gain security, but relinquish independence. They have too little choice and too little control over their personal living space. | Stabilization is limited to a small pool of housing, with little impact on the neighborhood as a whole. Instability among the housing's sponsors, moreover, may jeopardize neighborhood gains. |
| WEALTH | Resale-restricted housing is a poor personal investment. Occupants build relatively little wealth. | Public subsidies should be recaptured and reinvested, not locked passively and permanently into low-cost housing. |
| INVOLVEMENT | Too many contentious meetings and too many "free riders" put a strain on neighborliness and deplete social capital. | The owners of shared equity housing turn inwards, not outwards. Self-absorption, not civic engagement, is the more likely result. |
| IMPROVEMENT | Resale-restricted housing creates barriers to economic, social, and geographic mobility. Occupants are "stuck." | The tenure of a neighborhood's housing does not matter very much in promoting either development or diversity. |

The purpose of the present chapter is to apply and to refine both of these yardsticks in assessing whether various models of shared equity homeownership perform as promised. After describing more fully the claims and criticisms that attend these models, we shall consider the quality of the available evidence for confirming the claims that are made for shared equity homeownership or rebutting the

criticisms that are leveled against it.[162] Where evidence is lacking – or where findings are contradictory – we shall note the need for additional research if the performance of this sector is to be adequately assessed.

A word of caution must be sounded before embarking on this survey of what is known and not known about the performance of shared equity homeownership. As Apgar (2004: 40) has warned,

> At its best, quantitative housing policy analysis can "probe not prove." Indeed, in complex real life situations, "proving" something is particularly elusive. The methodological challenges confronting efforts to measure the impacts of alternative housing policies are numerous. In large measure, understanding the consequences of tenure choice is difficult because this research requires the isolation of a single variable in what is often a complex series of behavioral relationships.

Proving that nonmarket models of homeownership do what they claim to do is no less elusive than proving that market-rate models perform as promised.[163] Tenure matters, but it is often hard to say how much it matters, or when.

## Performance Standard 1: Affordability

| | |
|---|---|
| **Individual Affordability** | Access to homeownership is *expanded* for current homebuyers of modest means. |
| **Community Affordability** | Access to homeownership is *preserved* for future homebuyers of modest means. |

Affordability is the first standard by which the performance of shared equity homeownership may be judged. If these nonmarket models perform as promised, they will succeed where the market cannot, making homeowners out of households who could not otherwise afford the cost of buying and operating a house, townhouse, condominium, or cooperative apartment on their own. These models will also maintain the relative affordability of this owner-occupied housing over time, serving households at the same level of income (or at a lower level of income) across multiple resales. Shared equity homeownership can be deemed to have been effective in delivering and balancing its promised benefits, in other words, when shared equity homes are made affordable initially and kept affordable continuously, one lower-income homebuyer after another.

### Individual Affordability: Weighing the Pros and Cons

What do we know about the relative affordability of shared equity housing? The evidence shows that deed-restricted homes, community land trusts, and limited equity cooperatives do serve households at a lower level of income than comparable housing that is priced and sold through the market. Low-income households are the ones who predominantly buy and occupy shared equity housing. Most of this housing is targeted to households earning less than 80% of Area Median Income; much of it is targeted even lower. In many of the highest-priced housing markets in the United States, moreover, where access to homeownership has become all but impossible not only for the poor but for moderate-income households as well, resale-restricted housing is selling for a price that is low enough to allow many who have been excluded from the market to acquire an ownership stake in their housing. CLTs, LECs, and the sponsors of deed-restricted housing regularly accomplish what the market cannot.[164]

Critics are quick to assert, however, that the affordability of these models is more a function of the level of subsidy they enjoy than the form of tenure they employ. There is nothing intrinsic to the models themselves that results in a lower purchase price or lower operating costs than market-rate housing of a similar type, subsidized to a similar degree. Supporters of shared equity housing readily agree – up to a point. It is obviously the subsidy that reduces the price of a newly acquired home when it is first brought into the resale-restricted domain of shared equity housing. In every case, had the same amount of subsidy been poured into a market-rate home of similar size, quality, and type, a household at the same level of income would have been able to purchase that home.[165]

If it is the subsidy that makes shared equity housing affordable for the first generation of low-income homebuyers, however, it is tenure that keeps it affordable for the next generation.[166] Although a benefit earlier described and later discussed as one that accrues primarily to "community," the perpetuation of affordability clearly benefits individuals as well, for it enables LECs, CLTs, and the sponsors of deed-restricted housing to preserve ownership opportunities that public subsidies and private donations have made possible. The supply of resale-restricted, owner-occupied housing is not diminished every time another subsidized home is resold. Instead, the supply increases with every new home that is produced and subsidized, expanding access to homeownership for a growing number of people.

The tenure of shared equity homes may contribute to affordability in three other ways. First, the lower operating costs that are regularly reported for limited equity cooperatives are more likely to result from an LEC's ownership structure than its subsidy structure. A number of studies support Silver's (2002: 12) conclusion that "cooperatives cost less than virtually any kind of subsidized housing," with LECs in particular showing lower maintenance and management costs than comparable multiunit projects operated by for-profit landlords, nonprofit landlords, or public housing authorities.[167] The operating costs for LECs have been reported to be as much as a third lower in comparison with similar rental properties because of "members' pooling resources, members' concern for their property, and resident oversight of property affairs" (Chicago Mutual Housing Network, 2004: 35). Lower operating costs translate into lower carrying charges for an LEC's resident members, lowering the affordability threshold for homeownership.

Secondly, tenure sometimes matters in the competition for public assistance. Wherever a city or state has made regulatory concessions, fee waivers, or tax reductions available to dwelling units encumbered with durable controls over their use and resale – benefits not offered to market-rate housing – the form of tenure of a proposed residential project can have a significant impact on its initial affordability. Bellingham, WA, for example, provides a 50% density bonus for newly constructed owner-occupied housing that is made "permanently affordable."[168] Burlington, VT, provides a 50% waiver of impact fees for that portion of a proposed residential project that initially sells for a price affordable for households earning less than 75% of median income, if there is "continuing affordability" for a period of 99 years.[169] New Jersey, Vermont, and California, among other states, require municipal tax assessors to take account of long-term resale restrictions in establishing the taxable value of publicly assisted, owner-occupied housing.[170] Such measures either lower the cost of constructing a shared equity home or lower the cost of mortgaging and operating it. They make housing that is owned and operated as shared equity housing more affordable, expanding access to homeownership for persons of modest means.

Finally, tenure may affect affordability by influencing the front-end decisions that developers make when designing and building affordable housing. Shared equity housing comes with contractual restrictions and stewardship responsibilities that last many years. This may encourage those who are drafting the specifications, choosing the materials, and selecting the insulation, heating, and cooling systems for a newly constructed residential project to think in terms of a longer time horizon than is customary when planning the production of low-cost housing for low-income homebuyers. Some advocates for shared equity housing have argued, in fact, that a commitment to durable affordability is likely to lead to the use of more durable materials and the installation of more sustainable systems, development decisions that can have a major impact on stabilizing the long-term cost of operating a home. Their assertion must be treated as merely a hypothesis, however, since no one has yet studied this connection.

### Community Affordability: Weighing the Pros and Cons

The lower prices reported for shared equity homes and the lower incomes reported for the people who occupy them may be due, initially, to the subsidies that made this housing affordable. When lower prices persist over many years, however, and when shared equity homes continue to be acquired and occupied by low-income households as

most of the market-rate housing around them moves steadily beyond their reach, something else is at work. There is something different about the way that shared equity housing is owned and operated that allows people who are being priced out of the market to still have access to homeownership. Tenure may play a peripheral role in creating affordability; it plays the principal role in maintaining it.

At least, that is the claim. What evidence do we have that rearranging the rights of ownership to include durable controls over resale can actually preserve the affordability of owner-occupied housing? Much of the evidence is inferential or anecdotal. For over 30 years, a growing number of cities, counties, and states have been using deed covenants, ground leases, and other contractual components of shared equity housing to perpetuate the eligibility, occupancy, and affordability of housing produced with the assistance of public dollars or public powers. In California alone, virtually all of the 107 jurisdictions with inclusionary housing programs "now report that they have formal mechanisms to maintain affordability over time."[171] That is true for inclusionary housing programs in New Jersey, Massachusetts, Colorado, and several other states as well. The popularity of these mechanisms does not prove their effectiveness, of course, especially when there is so much variability in the resale formulas and other design features that make up a shared equity homeownership program. On the other hand, if these resale controls did not work – that is, if shared equity housing was not effective in maintaining affordability – the number of jurisdictions requiring such controls should be declining, not increasing.[172]

In light of how many jurisdictions are now requiring lasting affordability not only for inclusionary units, but also for homeownership units receiving financial assistance from a housing trust fund or some other public program, it is surprising how little documentation exists examining the performance of these resale-restricted units. Public officials throughout the country regularly assert that the conditions and controls they have imposed on privately owned housing are effective. Private practitioners, whose deed-restricted units, CLTs, or LECs have been the beneficiaries of public largess, regularly proclaim the capability of these tenures in retaining subsidies and maintaining affordability across multiple resales. But almost nobody – neither city, state, nor nonprofit – is systematically collecting, compiling, and analyzing data on resale-restricted, owner-occupied housing to measure how well – or how poorly – these models are actually performing.[173]

There are a few exceptions. In 2004, the Coalition for Nonprofit Housing & Economic Development published a study of limited equity cooperatives in the District of Columbia which examined, among other questions, the performance of LECs in maintaining long-term affordability. The study reported that:

> Limited-equity cooperatives remain much more affordable over the long run than either market-rate, multifamily rentals or condominiums because resale prices are restricted and as a result carrying charges (the equivalent of mortgage payments) are kept low. For the 30 cooperatives we examined . . . median monthly membership charges being levied in 2003 were just about half HUD's 2003 fair market rental rate for the District. (CNHED, 2004:14)

When the researchers focused more narrowly on |three gentrifying neighborhoods where nearly half of Washington's LECs are located, the comparative affordability of cooperative housing vis-à-vis market-rate housing was even greater. In 2003, the household income required to buy a median-priced condominium in Columbia Heights, Shaw, and Adams Morgan, neighborhoods that have experienced a steep increase in housing prices in recent years, was more than four times what was needed to pay the median carrying charges in the neighborhoods' limited equity cooperatives; the income required to pay the median rent for rental housing in these same neighborhoods was more than three times the cooperatives' carrying changes (Ibid.: 16).

Studies of limited equity cooperatives in New York City and Chicago found a similar pattern of continuing affordability amid escalating prices for nearby market-rate housing. Saegert et al. (2003: 22) examined 49 LECs in Manhattan's Clinton neighborhood and concluded:

> In summary, despite indications of gentrification in the area, LECs remain affordable to lower income residents. Our data indicated that while LECs were in better physical condition than neighboring housing, monthly costs were lower.

The Chicago Mutual Housing Network (2004) examined both LECs and market-rate cooperatives in a study of 206 housing cooperatives. The shares in Chicago's market-rate cooperatives were found to be selling for an average price of $75,000, at a time when the average price for a market-rate house or condominium in Chicago was $224,000. Affordability was far greater in the city's LECs. Median share prices in these limited equity cooperatives were $1,390 for a one-bedroom unit; $2,875 for a two-bedroom unit; and $3,315 for a three-bedroom unit. Over a third of the city's LECs had a share price between $500 and $3,000.

With share prices so low and with monthly carrying charges comparable to the rents charged in the average subsidized rental project, Chicago's LECs have attracted and retained a population with an income that is too low to enter the private housing market, but too high for most subsidized housing. A majority of the member households are headed by African-American women earning $28,000 to $40,000 per year (CMHN, 2004: 10–11). The lower prices of these LECs and the lower incomes of the households who occupy them have the same cause, according to CMHN (Ibid.: 17):

> These cooperatives are affordable to subsequent member-owners because the increase in resale price is usually capped at a fixed rate. . . . This model guarantees long-term affordability and stability for both residents and neighborhoods.

Claims for the continuing affordability of shared equity housing other than LECs have received far less scrutiny, except for a recent performance evaluation of a single CLT. Davis and Demetrowitz (2003) examined 97 limited equity houses and condominiums that were sold and resold through the Burlington Community Land Trust between 1988 and 2002. They found that affordability not only continued between successive generations of low-income homebuyers, but improved – even when the favorable effect of falling mortgage interest rates was removed. The price of the average BCLT home was affordable to a household earning 62% of AMI on initial sale. On resale, it was affordable to a household earning 57% of AMI. The durable controls encumbering these BCLT homes had caused an 8.5% gain in affordability, averaged across all 97 resales.[174]

> In sum, during a period when the prices for market-rate homes were moving steadily upward, the BCLT was effective in stabilizing the prices of its own stock of owner-occupied housing, ensuring that the same class of people who had initially bought these homes could still afford them when they were eventually resold. Between 1988 and 2002, the BCLT delivered on its promise of preserving affordability, one resale after another. (p. 10)

Although the case for the continuing affordability of shared equity housing rests on very few studies – and lots of anecdotal evidence – critics of these alternative models have rarely challenged the claim that contractual controls are effective in preserving access to homeownership for populations excluded from the market. Instead, they have challenged the preference for homeownership itself, asserting that the community's interest is poorly served whenever scarce housing subsidies are poured into helping a few fortunate households to purchase homes. For people who lack safe, decent, and affordable housing, homeownership is more than they need, say these critics, and certainly more than the public can afford. Public funds for affordable housing would be better invested in subsidizing rental housing, since its costs are lower, its affordability is deeper, and it serves a population whose needs are greater. Homeownership, by contrast, is a high-cost, low-volume public investment, serving people near the middle of the income ladder, not those who are truly poor.

This particular line of criticism is not specific to shared equity housing, of course, for it condemns every public program or policy priority that favors home-

ownership over rental housing. The form of homeownerip is unimportant to these critics. It does not matter to them whether the homeowner housing being assisted by the public is encumbered with resale restrictions or not.

But it *should* matter, answer the advocates for shared equity housing. They tend to agree, perhaps a little too quickly, that subsidizing homeownership for the poor is a pricey proposition compared to the cost of subsidizing rental housing. They concede the point that the front-end cost of closing the gap between a purchase price that a low-income household can afford and the total development cost of a house or condominium can be excessive – but only if the homeowner is allowed to pocket this subsidy when the home is resold. If the subsidy is retained in the housing, as it is in shared equity homeownership, aiding multiple generations of low-income homeowners, then the higher per-unit subsidy needed for homeownership becomes a more reasonable investment. Those who argue this position sometimes go further: They assert that subsidizing homeowner housing with durable restrictions over its use and resale is not only less costly than subsidizing market-rate homeownership, but also less also costly than subsidizing low-income rental housing over the long run.[175]

The evidence for subsidy retention will be examined below, when we consider the claim that shared equity housing is effective in protecting the community's investment in affordable housing. It can be said here, however, that very little research has been done comparing the long-term cost of subsidizing shared equity homeownership versus the long-term cost of subsidizing market-rate homeownership or low-income rentals. Walker and Gustafson (forthcoming: 11) compared limited equity cooperatives developed through the federal 221(d)(3) program with low-income rental housing owned either by nonprofit organizations or by for-profit investors and concluded that "average monthly costs in cooperative housing appear more affordable, and therefore required shallower rent subsidies." Barton (1996) compared the cost of subsidizing the acquisition and development of permanently affordable "social housing" versus the cost of subsidizing the monthly rents of low-income tenants. Dubbing the first an "acquisition" program and the second a "housing allowance" or "direct assistance" program, he showed the former to be more cost-effective in the long run:

> Clearly the immediate advantage of a housing allowance program is that you can reach a lot more people right away with the same amount of money. The long-term advantage of the acquisition program, however, is that the number of units assisted increases every year, while the housing allowance program helps the same number of people each year. It takes fourteen years before the acquisition program helps as many people as the direct assistance program does, but from year fourteen on, the acquisition program helps more people than the housing allowance program does. (p. 113)

These studies lend some credence to the notion that the larger front-end subsidy that is usually required to boost low-income tenants into homeownership may be justified, if directed toward models of tenure that perpetuate affordability over many years. But these studies are hardly conclusive. More research will be needed before it is possible to refute those critics of shared equity housing that say homeownership is a poor investment of scarce public funds if the housing needs of the poor are to be met, no matter what form homeownership might take.

## Performance Standard 2: Stability

| | |
|---|---|
| **Individual Stability** | Security of tenure is enhanced. The risks of homeownership are reduced. |
| **Community Stability** | Neighborhood stability is increased. |

Stability is the second standard by which the performance of shared equity homeownership may be judged. If these nonmarket models perform as promised, people with limited resources, most of whom have become homeowners for the very first time, will succeed. They will remain in their homes for as long as they want. They will maintain their homes in good repair. They will

continue to meet the financial obligations of homeownership. They will rarely default. They will seldom lose their homes through foreclosure, even in the face of economic hardship. The accumulation of these small, individual successes will benefit the community as well. Especially in neighborhoods where the condition, affordability, or security of low-cost housing has been put at risk by disinvestment or reinvestment, shared equity housing can be a rock of relative stability. These models can be deemed to have been effective in delivering and balancing their promised benefits, in short, when first-time homeowners succeed in maintaining and retaining the housing that is theirs and when any gain that a community has made in expanding its stock of affordable, owner-occupied housing is preserved.

### Individual Stability: Weighing the Pros and Cons

There are indications that the owners of shared equity housing do succeed in the ways described above, although none of the evidence is so complete or so conclusive as to "prove" the case for individual stability. Discussed below is what we know and do not know about the effect of shared equity housing on four indicators of individual stability: length of residency, condition of units, diversity of occupants, and security of tenure.

*Length of residency.* A number of studies of limited equity cooperatives have noted lower rates of turnover, accompanied by a tendency of co-op members to live in their homes longer than is typical for either renters or market-rate homeowners.[176] Similar studies have not been done for CLTs or for deed-restricted housing. In Chicago, co-op residency averages 17.6 years (CMHN, 2004: 7). In the New York LECs examined by Saegert et al. (2003: 14), over 80% of the residents had lived in their buildings for more than ten years. An earlier study of LECs in New York City (Task Force on City Owned Property, 1993) compared for-profit rentals and cooperative housing, finding a longer average residency in the latter. Walker and Gustafson (forthcoming: 8), on the other hand, in a comparative study of LECs, nonprofit rental housing, and for-profit rentals, found that the "average length of tenure in cooperative projects is higher compared to for-profit projects, but no different from nonprofit projects."

*Condition of units.* Another measure of stability is the physical condition of the property commended into a homeowner's care. If housing deteriorates because a low-income homeowner cannot afford its upkeep or, even worse, if the burden of maintenance threatens the homeowner's security of tenure because she cannot meet either the fluctuating cost of unexpected repairs or the fixed cost of a mortgage, the individual's success as a homeowner is hardly assured. This is not uncommon. A recent study of low-income and moderate-income homeowners who had purchased market-rate homes with the assistance of a NeighborWorks organization reported that 56% of these newly minted homeowners encountered unexpected repairs and that 20% were unable to make such repairs, even to roofs and foundations (Saegert, Justa, and Winkel, 2005).

A promise of shared equity homeownership, by contrast, is that the condition of this housing will be maintained, despite the modest incomes of most of the people who occupy it. As DeFilippis (2004: 108) has noted:

> Problems arise when low-income homeowners are faced with large-scale repairs and unexpected costs they cannot afford. . . . In contrast, these collectives are frameworks that can protect the long-term maintenance of the units as well as their long-term affordability.

Several studies have confirmed that the owner-occupants of one form of shared equity housing, the limited equity cooperative, do a superior job of maintaining their property, especially when compared to rental housing.[177] In an LEC, the costs of maintenance and major repairs are either absorbed by the cooperative's annual operating budget or covered by the cooperative's reserves. Some repairs are avoided altogether because the responsibility for upkeep is collectively shouldered by a cooperative's members. As CMHN (2004: 20) observed, in its study of Chicago's cooperatives:

> A co-op corporation is in a vastly superior position to a condominium or the owner of a single-family home, where the costs must be absorbed by

the individual owner. Since the co-op sets standards for residents, such problems as damage to the facilities, excessive utility usage, noise, and crime are forestalled.

Similar standards are established for the residents of CLT housing and, in many cases, for the residents of deed-restricted housing. CLT ground leases typically require homeowners to "maintain the Leased Premises and Improvements in good, safe, and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations." The same sort of provision is found in many deed covenants. The resale formula contained in many leases and covenants, moreover, either rewards the sellers of shared equity homes for keeping their property in good condition or penalizes them for failing to do so.

There is no way of knowing whether such mechanisms work as well in CLT housing and in deed-restricted housing as they seem to work in LECs, however, since no one has yet studied this particular feature of CLTs and deed-restricted homes. Anecdotal reports from the field suggest that this housing is being kept in decent condition. Neither CLTs nor the sponsors of deed-restricted housing seem to be incurring extraordinary costs in refurbishing homes on turnover or to be experiencing condition-related difficulties in reselling them to new buyers, but without more data it cannot be said with certainty that the administrative oversight and shared responsibilities that are incorporated into these models are resulting in adequate maintenance.

*Diversity of occupants.* The claim that shared equity housing is an attractive and supportive form of tenure for populations with an inability to bear individually the burdens of homeownership has so far been examined only with regard to cooperative housing. Saegert and Benitez (2005), in their assessment of the benefits offered by limited equity cooperatives, concluded that "LECs provide special support for the disabled, elderly, and single women – all of whom could be presumed to have a difficult time being homeowners on their own." An earlier study by Leavitt and Saegert (1990) noted the predominance of women among members and leaders of the LECs developed through New York City's Tenant Interim Lease program. Case studies by Wekerle and Novac (1989) and Wekerle (1988) tracked the empowerment of women in several Canadian cooperatives. Women and female-headed households were also found to be a dominant presence in the Chicago LECs examined by CMHN (2004) and in the 221(d)(3) cooperatives examined by Walker and Gustafson (forthcoming). Less evidence has been found of cooperatives being favored by and beneficial to persons with disabilities or persons who are elderly.[178] Indeed, the percentage of residents who were disabled or elderly was significantly lower in the LECs studied by Walker and Gustafson than in the comparison groups of nonprofit and for-profit rentals.

*Security of tenure.* Amidst the national drumbeat of political support for increasing homeownership among low-income families, it is sometimes difficult to hear the concerns of those who wonder whether everyone can bear – or should bear – individually the burden of owning a home.[179] They worry about the precarious hold that low-income homeowners have over the market-rate housing that is theirs. With too little preparation for the added responsibilities of homeownership, too little protection against predatory lenders, too little ability to assess the soundness of a property prior to purchase, too little savings to make unexpected repairs after purchase, or too little income to cushion against mortgage default when a job is lost, a marriage dissolves, or earnings decline, too many low-income homeowners end up losing their homes. This is hardly a rare occurrence. Reid (2005) determined that only 47% of first-time low-income homebuyers in her study were still homeowners five years after purchasing a market-rate home. Boehm and Schlottmann (2004: 33) discovered a "high likelihood that lower income families will slip back to renting after attaining homeownership" and went on to recommend that more attention be paid to policies and programs "designed to ensure that once households achieve homeownership, they remain homeowners (rather than reverting to rental tenure)."

Shared equity homeownership is designed to do just that, safeguarding a homeowner's security of tenure. Most

sponsors of resale-restricted housing retain the authority to review and to approve any mortgage or lien prior to it being recorded against a shared equity home. This allows the sponsor to protect its homeowners against predatory lending, while protecting itself against mortgage provisions that can undermine its ability to regulate the home's use and resale.[180] Most sponsors of resale-restricted housing do a careful job of inspecting properties, upgrading systems, and preparing homeowners prior to purchase. Most provide default intervention and foreclosure prevention services as well, similar to those provided by many homebuyer counseling and homeownership assistance programs. These services have demonstrated their effectiveness in protecting homeownership in cases where first-time homebuyers, experiencing personal hardship and getting behind in their financial obligations, can face the loss of their homes. What is different about shared equity housing – LECs and CLTs, in particular – is that such backstopping is not an external service, but an internal component of the housing itself. The corporate sponsors of the housing have a direct and durable stake in seeing that their member-owners succeed, accompanied by a durable right to intervene should they falter.[181] Conversations with LEC board members and with CLT staff are replete with stories of homeowners in distress being helped to hang onto their homes because of the LEC's or the CLT's intervention. The CLT studied by Davis and Demetrowitz (2003), for instance, reported that such events occurred on the average of twice a year.[182]

There is reason to believe that the front-end and back-end protections, services, and interventions that are commonplace in shared equity housing may indeed produce a higher rate of success among first-time homeowners than is typically found among low-income homeowners who are forced to navigate the perils and shoulder the burdens of market-rate homeownership by themselves. Little data has been compiled to date, however, looking specifically at the effectiveness of these security enhancements – examining whether the hold which the owner-occupants of shared equity housing have over their homes is actually more secure than that which is found among the owner-occupants of market-rate housing or, for that matter, among the tenant-occupants of publicly regulated or publicly subsidized rental housing.

Although more research on all four indicators of individual stability is clearly needed before it can be said with confidence that low-income owners of shared equity housing succeed at a higher rate, most critics of these nonmarket models are inclined to concede that sharing the risks and responsibilities of homeownership can enhance security over the long run. What they see it producing day to day, however, is greater dependency. Their objection is that the occupants of shared equity housing have only a semblance of the autonomy that homeownership is supposed to provide. They cannot use, shape, or develop their personal living space independently of the dictates of another. They cannot choose who may purchase and occupy their homes when they decide to sell. Indeed, they possess so few sticks in the traditional bundle of rights and exercise so little control over their housing, say these critics, that it is probably a stretch to call them homeowners at all.[183]

Aside from the fact that most shared equity housing is authorized, zoned, financed, and taxed in ways that are indisputably closer to homeownership than to tenancy, the most telling rebuttal to this line of criticism comes from the occupants themselves. They are far more likely to compare themselves to the tenants they were, celebrating rights they have gained, than to compare themselves to the owner-occupants of market-rate homes, lamenting prerogatives they have foregone. They call themselves homeowners. They behave like homeowners. Even in limited equity cooperatives and mutual housing associations, where the occupants possess fewer of a homeowner's traditional rights than do the occupants of CLT housing or deed-restricted housing, most resident-members tend to see themselves as homeowners, not as tenants.

They are not so different, in this regard, from those owners of market-rate housing whose homes are part of common interest communities like condominiums, planned developments, or market-rate cooperatives. There are no restrictions on resale prices in these communities, but the associations which govern them frequently exert as much control – in some cases, even more control – over

the selection of homebuyers, the subletting of homes, and the personal use of individual property and common property as can be found in any form of shared equity housing. The far-reaching powers of these associations are well described by Silverman and Barton (1987: 5):[184]

> Common interest developments may require particular types of carpeting or soundproofing, restrict the presence of children or pets, and regulate the color of doors and curtains, the design of porches, patios, and walks, the use of alcoholic beverages in public areas, parking, the use of swimming pools and tennis courts, and even the use of residences by relatives and friends of the owner. . . . The association further has the power to raise monies through regular and special assessments and to punish members for rule violations by revoking voting rights and rights to use common areas, and by leveling fines. In the case of nonpayment of dues, the board can place liens and foreclose upon the unit.

When the same sorts of restrictions are discovered in shared equity housing, it seems disingenuous to suggest that the occupants of such housing cannot be considered "real" homeowners because they have relinquished control to some outside party.[185] In reality, it is the newfound control which the occupants of shared equity housing now possess over their housing environment, more than any other factor, which seems to nurture and sustain their self-identification as homeowners. Whether that control is exercised individually by one occupant (as in deed-restricted housing), collectively by all occupants (as in an LEC or MHA), or jointly by the occupant and the landowner (as in a CLT), the residents of shared equity housing are quick to point out that they are the ones who are calling the shots, accepting the risks, and deciding the fate of the housing that is theirs. More than anyone else, they are the ones in charge. Even in larger projects, where a majority of residents tend to absent themselves from most day-to-day decisions affecting their housing, they never entirely relinquish the control that is theirs. As Cooper and Rodman (1992: 242) observed in the LECs they studied in Toronto:

> The majority who were uninvolved or only moderately involved retained a fairly strong ability to assert their control. They contributed in decision making on those issues that excited them and could object to decisions made by the board of directors that seemed to run counter to their interests.

This is not autonomy. The residents of shared equity housing do not have total sway over the use and resale of their property. But they do make most of the decisions affecting the cost, quality, and stability of their housing.[186] They have left the dependency of tenancy far behind. In their own minds, they are homeowners, no matter what the critics might say.[187]

## Community Stability: Weighing the Pros and Cons

It is an article of faith among public officials, private citizens, and academics alike that residential neighborhoods with more owner-occupied housing will have more stability than those in which most of the housing is renter-occupied. Among the many neighborhood benefits that homeownership is believed to confer are reducing turnover in the residential population, encouraging the upkeep of residential buildings, preserving property values, increasing participation in community organizations, and reducing social maladies like juvenile delinquency, high school dropout rates, and crime. To the extent that the presumed correlation between higher homeownership rates and stronger neighborhoods is actually valid – and the evidence for some of these neighborhood effects is unconvincing[188] – any increase in homeownership caused by shared equity housing should make a positive contribution toward neighborhood stability.

CLTs and LECs, in particular, have often been called upon to play this stabilizing role, both in neighborhoods that are declining and in neighborhoods that are gentrifying. In declining areas, where stabilization is a matter of reversing the effects of too little investment, shared equity models have been used to redevelop vacant lots into new housing, to rehabilitate decrepit buildings

into decent housing, and to expand homeownership where no homebuyer market has previously existed.[189] In gentrifying areas, where stabilization is a matter of moderating the effects of too much speculative investment, shared equity models have been used to preserve the affordability of low-cost housing and to prevent the displacement of low-income people.[190]

Although the record is mixed and the documentation is spotty, CLTs and LECs have clearly had some success in both types of neighborhoods, at least when it comes to stabilizing conditions for their own residents. What is less clear is how successful these models have been in stabilizing conditions outside their own domain, since their wider impact on persons, properties, and prices in the surrounding neighborhood has rarely been studied. It becomes difficult, therefore, to rebut those critics who say that community interests are poorly served because the sphere of influence of shared equity housing is too small. Whatever stability is enjoyed by these owner-occupants is limited to them alone. All who are lucky enough to live in these shared equity homes have the security of knowing that their housing is somewhat insulated from market forces that bring deferred maintenance to some doorsteps and gentrification to others, but the rest of the community is not so fortunate. Beyond the safe harbor of shared equity housing, the bulk of a neighborhood's residential property is left dangerously exposed to what DeFilippis (2004:144) has described as "the possibility of uncontrollable flows of investment and disinvestment and the vagaries of the market." The stabilization achieved by shared equity housing is real, concede these critics, but only for those homeowners residing safely within its walls.

Another aspect of community stability attracts its own set of critics. For LECs, CLTs, and deed-restricted housing, stability is a function of longevity. Whatever contribution these models may make toward stabilizing a neighborhood is largely dependent upon their ability to preserve whatever gains they have made in expanding a neighborhood's stock of affordable, owner-occupied housing. If affordability is lost when the housing is resold, if owner-occupancy is lost when a homeowner defaults, when a bank forecloses, or when a homeowner simply decides there is more money to be had in subletting than in occupying the home, the neighborhood loses some of the ground that was previously gained. Stability is eroded, not enhanced.

Preventing such losses, the record suggests, is probably what these models do best, for they preserve both the affordability and owner-occupancy of the housing they have helped to create. Owner-occupancy is required. Subletting is regulated. Mortgaging is monitored. Resales are controlled, as are behests. What starts out as affordable homeownership stays that way for as long as the controls over affordability and occupancy are designed to last. Even when a homeowner does not succeed, despite whatever "backstopping" has been offered by the housing's sponsor, the assisted home is rarely lost to the market. Under most forms of shared equity housing, the sponsor is able to regain possession of the property in cases of an incurable default or actual foreclosure, eventually reselling it to another low-income homebuyer. The homeownership opportunity survives, even when the homeowner fails.[191]

That is possible, however, only if the sponsor also survives. The corporate entity that supports and sustains this resale-restricted housing must itself be sustained for a very long time if shared equity homeownership is to have a lasting impact on neighborhood stability. To put it another way, the LECs, CLTs, and other organizations that assume responsibility for maintaining the affordability and owner-occupancy of such housing must be as durable as the controls they are expected to enforce. Critics have their doubts. Pointing to several high-profile failures of nonprofit housing developers, they question whether prospects for the survival of LECs, CLTs, and other nonprofit sponsors of shared equity housing are any better.[192] Will they last long enough to deliver the stability they promise?

The record to date is fairly encouraging. As usual, LECs have been researched more extensively in this regard than other forms of shared equity housing. The resiliency of the LEC was first demonstrated during the Great Depression, when all but two of New York City's market-rate cooperatives died, while all of its LECs survived (Siegler and Levy, 1986). For a later generation of LECs, Calhoun and Walker (1994) found that 80% of

the Section 221(d)(3) mortgages provided to limited equity cooperatives between 1958 and 1989 were likely to "survive"; that is, to continue performing as paying loans. This was somewhat better than the performance of comparable projects owned by limited-dividend companies and much better than the performance of projects owned by nonprofit organizations. A similar pattern has been found in the Section 213 FHA mortgage insurance program, where default rates on Section 213–insured cooperatives have been lower than for any other HUD multifamily program.[193] A study of limited equity cooperatives in the District of Columbia (CNHED, 2004) discovered that only four of the 81 LECs formed in the 25 years following passage of the District's Rental Housing Act of 1977 had been lost to foreclosure. Another 20 had been lost through sales to private owners. Fifty-seven still existed as LECs.[194] The performance of LECs in New York City, across the same span of years, was even better. Since 1975, 1,036 LECs have been developed for low- and moderate-income residents. All but 27 still exist – a survival rate of 97%.[195]

Much less attention has been paid to the survivability of community land trusts, due in part to CLTs being relatively new and relatively few in comparison with LECs. Until recently, there existed neither an accurate count of how many CLTs have been created in the United States, nor a reasonable estimate of how many have failed. Early in 2006, however, Burlington Associates in Community Development, a consulting cooperative that provides technical assistance to many CLTs nationwide, reported the preliminary results of its own analysis of survival rates among organizations making use of the CLT model to hold land for residential purposes.[196] Out of 194 CLTs formed in the United States between 1970 and 2006, Burlington Associates found that 175 had matured to the point where they owned at least one parcel of land. Among these "propertied" CLTs, 162 were still in existence on May 1, 2006 – a survival rate of 92% (Burlington Associates, 2006).

Almost nothing is known about the survivability of the organizations charged with monitoring and enforcing occupancy, eligibility, and affordability restrictions imposed on deed-restricted housing. Where a public agency has been assigned this responsibility, there is probably little danger of that agency disappearing before covenants lapse on the deed-restricted housing which the same agency may have helped to create. On the other hand, with a change in priorities or a change in administration, a public agency that was once diligent in overseeing its stock of deed-restricted housing can become negligent. The covenants may endure but, with no one to watch over them, they may have very little effect.[197] Where the responsibility for overseeing such housing has been delegated to a nonprofit partner instead, the risk of neglect may be reduced. But the nonprofit organization itself must still have the capacity to meet its oversight responsibilities over a long period of time. The most stable partnerships for the monitoring and enforcement of publicly created, deed-restricted housing may resemble those in King County, WA, and in Massachusetts, where local governments or state agencies have contracted with nonprofit organizations to carry out their oversight responsibilities.[198] No one has yet studied, however, how common or sustainable such arrangements may be.

Amidst these signs of survivability, there are also hints of fragility. Sazama (2000) and Skelton (2002) have called attention to the relative weakness of housing cooperatives in the United States, compared to their counterparts in Sweden, due to the lack of an interlocking system of secondary and tertiary cooperatives that can support individual cooperatives when they get in trouble. The study of LECs in the District of Columbia found 80% to be in "stable" or "excellent" condition, but it also concluded that 20% of the District's LECs are "severely troubled and in need of immediate assistance" (CNHED, 2004: 13). Saegert et al. (2003: 22–23), while documenting the durability of LECs in a gentrifying neighborhood in Manhattan, noted that "some LEC shareholders now threaten the existence of LECs by undermining the resale policy and opening the door for market value sales." The struggle to maintain affordability controls in LECs within the Cedar-Riverside neighborhood of Minneapolis has been described by Stoecker (2005). Similar battles have been reported within mature cooperatives in Illinois and Massachusetts, where the conversion of LECs to market-rate housing has threatened to

privatize both capital gains and public subsidies (Sazama and Willcox, 1995: 28). Even in New York's Co-op City, the largest LEC in the country, there has been a rumbling about possibly relaxing the cooperative's resale controls (Frazier, 2006).

As for community land trusts, Burlington Associates (2006) discovered only 13 "propertied" CLTs that had dissolved during the past 35 years, a failure rate of only 8%. But another 25 CLTs were found to be "dormant." These CLTs still owned property and, in many cases, still had leaseholders living on their land, but they no longer had staff members or board members who were actively monitoring and enforcing the CLT's leases. Representing 15.4% of all CLTs with property, the proportion of dormant CLTs nationwide approaches the percentage of troubled LECs in Washington, DC.

These frailties must be kept in perspective. The organizational sponsors of shared equity housing look pretty solid when compared to the failure rates among start-up businesses, where three out of five tend to collapse within the first five years. They also look pretty solid when compared to foreclosure rates among housing projects owned by for-profit developers. They look pretty solid when compared to the litigation rates among members of condominium associations and many other market-rate common interest communities.

Nevertheless, the organizational frailties of shared equity housing are real. Too many LECs are shaky. Too many CLTs are dormant. Too many arrangements for the monitoring and enforcement of deed-restricted housing seem unsubstantial or unsustainable. That does not mean that critics who challenge the stabilization claims of shared equity housing are necessarily correct. When asserting that community gains may be short-lived because the organizations that safeguard them are likely to be short-lived, these critics tend to ignore both the history of durability displayed by most shared equity housing and the levels of redundancy incorporated into many of these models and programs, particularly when public money is involved.[199] If the front-line organization with primary responsibility for preserving occupancy, eligibility, and affordability controls mandated by government should fail, there is often a contractual provision for another nonprofit or public-sector organization to take its place. On the other hand, there are enough cracks in the organizational foundation of shared equity housing to suggest the need for more research into why some LECs, some CLTs, and some sponsors of deed-restricted housing prosper, while others founder or fail. [200] Proving the claim that shared equity housing can be effective in stabilizing residential communities depends, in part, on showing that these models have the capacity to endure.

## Performance Standard 3: Wealth

| | |
|---|---|
| **Individual Wealth** | Personal assets are enlarged. |
| **Community Wealth** | Community assets are preserved. |

Wealth is the third standard by which the performance of shared equity homeownership may be judged. If these models perform as promised, there should be a net gain in wealth for the households who own, occupy, and eventually resell this housing. Homeowners should be better off when they move out of a shared equity home than they were when they moved in. At the same time, there should be no net loss in the value of the community's investment. Whatever wealth a community has contributed toward making homes affordable for one generation of low-income homeowners should be retained for the benefit of subsequent generations of low-income homebuyers. These nonmarket models can be deemed to have been effective in delivering and balancing their promised benefits, in other words, when the assets of individuals are enlarged and the assets of community are preserved.

### Individual Wealth: Weighing the Pros and Cons

It is striking how many of the public debates and private discussions regarding LECs, CLTs, and deed-restricted housing start from the unfounded but unshakable misconception that the owner-occupants of such housing realize no financial gain. To say "yes" to equity limitation,

in the minds of many, is to say "no" to wealth creation. As Jacobus (2004: 5) has observed:

> Both critics and advocates for permanent affordability regularly overlook the very real equity building that happens in most limited equity ownership programs. All permanently affordable homeownership programs generate assets for the homeowners. Some do a much better job than others.

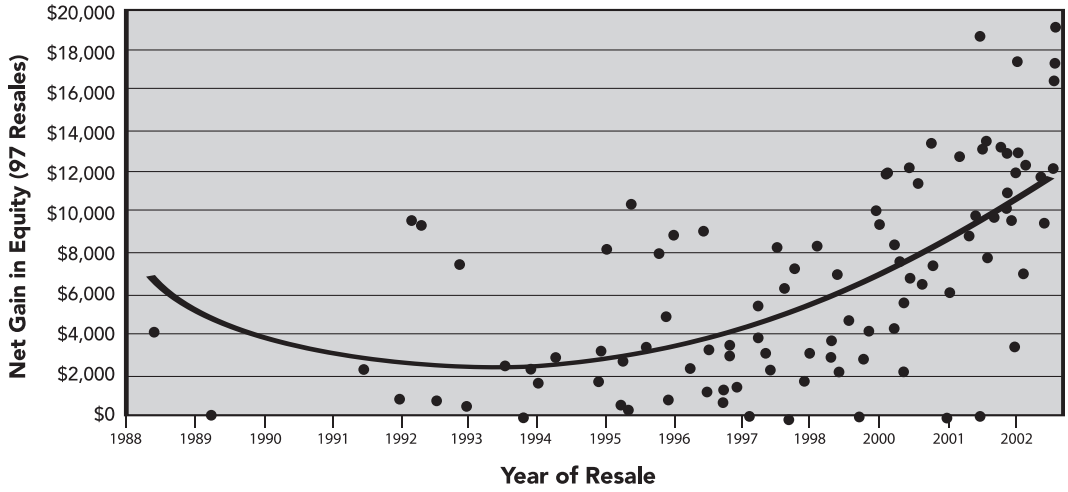
Some allow for the buildup of only a little equity. Some allow for a lot. Seldom does a homeowner walk away with none. The real question is not whether wealth is created for the owner-occupants of shared equity housing, but how much. And is it enough?[201]

If the standard of "enough" is that persons who buy, occupy, improve, and resell resale-restricted homes reap more financial gain from their housing than persons who rent, then the claim of wealth creation should be easy to prove. These owners recover a portion of the payments they have made in purchasing, mortgaging, and improving their shared equity homes. They get back their downpayment – or, in the case of cooperative housing, the purchase price of their shares. They get back whatever equity they have accumulated by paying off a portion of their mortgage or share loan.[202] They may recover some or all of what they have spent in making major capital improvements. They may also be able to resell their ownership interest (depending on the terms of their resale formula) for more than its initial purchase price, realizing a significant gain.

By contrast, renters neither build equity nor recover costs. In many cases, they do not even recover their security deposits, the "investment" they made to gain access to their dwellings. It is hardly a stretch to claim, therefore, that the owners of shared equity housing walk away with more wealth than renters – and with more wealth than they themselves once possessed.

There has been remarkably little interest, however, in documenting how much the owners of shared equity housing actually put into their pockets when they resell their houses, townhouses, condominiums, or cooperative shares. The magnitude of that wealth has rarely been measured. The one study that explicitly tackled this neglected topic relied on relatively few cases. In their performance evaluation of the Burlington Community Land Trust, Davis and Demetrowitz (2003) calculated the equity gains for 97 BCLT homeowners who resold a limited equity house or limited equity condominium between 1988 and 2002. Two types of proceeds were included in their calculations: the amount of principal that each BCLT homeowner had paid off on her mortgage; and the share of appreciation that each BCLT homeowner had earned, if her home increased in value between the time of purchase and the time of

**Figure 5.1**
**BCLT Homeowner Equity Gains, 1988-2002**



resale, a period of occupancy that averaged a little over five years.[203] In 90 out of 97 resales, BCLT homeowners gained equity through the amortization of their mortgages. The only cases in which no equity was earned through principal reduction were seven homes that changed hands because of a foreclosure or the transfer of a deed in lieu of foreclosure. In 63 out of 97 resales, BCLT homeowners gained equity by sharing in their home's appreciation.[204] These gains are plotted in Figure 5.1, above.[205]

Averaged across all 97 resales, BCLT homeowners were able to recoup their original downpayment of $2,000 and to pocket additional proceeds of $6,184 after paying off the balance of their mortgages. On an annualized basis, where the average BCLT resale occurred after 5.3 years of owner-occupancy, this represented a net gain in equity of 30%. Counting only those proceeds derived from appreciation, the rate of return on the homeowners' initial investment was 17%. Included in these averages, it should be noted, were resales where homeowners earned nothing, due to foreclosure, and resales where homeowners did not earn a share of appreciation, since their homes did not increase in value. When these cases were removed, the averages rose. BCLT homeowners whose property increased in value and who earned a share of this appreciation were able to pocket, on average, net proceeds of $8,541. They realized an annualized net gain in equity of 31%. The rate of return on their initial investment, counting only those proceeds from appreciation, averaged 20%.

It would be difficult to deny that wealth was being created for these individuals. Most homeowners clearly left the BCLT after five years with more assets than they brought with them when buying their resale-restricted house or condominium. But was it "enough?" Many critics of shared equity housing would answer "no," relying on one or more of three different arguments:

- The wealth realized by the owners of resale-restricted housing is not enough because it is less than what the owners of comparable market-rate housing would earn, especially when the real estate market is booming.
- The wealth realized by the owners of resale-restricted housing is not enough because these homeowners will never be able to move up into market-rate housing.
- The wealth realized by the owners of resale-restricted housing is not enough because it is too little to allow low-income people to transform their lives and the lives of their children.

Although critics of shared equity housing have made little effort to substantiate these arguments, it must also be said that advocates have done just as little to rebut them. Only occasionally has the claim for wealth creation been buttressed by the kinds of data and analysis that would allow the advocates for shared equity housing to say with confidence that their critics are wrong.

What we do know from the data provided by Davis and Demetrowitz (2003) is that during a single span of 14 years, in one market, under one resale formula, CLT homeowners realized a very respectable 17% to 20% return when reselling their limited equity homes. They earned less than the owners of market-rate homes in the Burlington MSA during the same period of time, but the return on their shared equity home exceeded what they could have realized had they put their downpayment into a low-risk investment like a mutual fund instead of buying a BCLT home.

Jacobus (2005) found a similar pattern. He modeled the earnings of homeowners in market-rate housing and the earnings of homeowners in limited equity housing under different economic conditions, some hypothetical and some based on historical trends. He then compared the earnings that both sets of homeowners could have realized through alternative investments. He found that market-rate homeowners realize much higher gains than limited equity homeowners when housing prices are rapidly rising. Even in periods of "normal" price inflation,[206] market-rate homeowners did better, although the spread was smaller. Under normal conditions, the owners of market-rate homes earned a 33% return on their investment, while the owners of limited equity homes earned "only" a 29% return. This was a far better return, however, than the 1% to 2% rate of interest that a savings account would have offered the same homeown-

ers, the 3% to 4% rate of interest for a Certificate of Deposit, or an 8% to 9% return from mutual funds, the investment strategy of choice for many middle class families. Jacobus concluded that "there is simply no other reasonably safe investment that provides the kind of return on investment that limited equity housing offers – except unlimited equity housing" (2005: 24).

Jacobus also examined whether the owner-occupants of resale-restricted housing realized enough equity on resale to make the leap into the conventional homeownership market. Comparing various resale formulas, he found that "regardless of how generous our appreciation formula is, buyers who initially required a public subsidy will find comparable market-rate homeownership unaffordable as long as their household incomes rise more slowly than housing prices" (2005: 23). This would seem to corroborate the criticism that individual mobility into market-rate homeownership may be impeded by limiting the equity of low-income homeowners. But Jacobus goes on to note that:

> . . . even with a strict resale price restriction, these families will have improved their buying power relative to their initial position, even if housing prices rise faster than their incomes. The reality is that homeowners who sell limited equity houses do manage to buy market-rate housing.

Davis and Demetrowitz (2003: 23) would agree, since their data revealed that three-quarters of the homeowners who resold a limited equity home managed to buy a market-rate home after leaving the BCLT. In the parlance of the real estate industry, 74% of these lower-income homeowners "traded up" to a second home, using the equity they had earned and the experience they had gained from owning a BCLT home as a stepping stone toward a home of higher value.[207] Unfortunately, this evaluation of a single CLT seems to be the only published study ever to track the subsequent housing situations of homeowners leaving any form of shared equity homeownership. It remains an open question, therefore, as to whether these alternative models of tenure create "enough" wealth for mobility. (We shall return to this topic later on, when we consider the claim for individual improvement.)

The most intriguing of the three criticisms regarding wealth creation in shared equity housing is the last, especially when couched in terms of Shapiro's concept of "transformative assets." Home ownership is one of several forms of wealth, according to Shapiro (2004: 10), which are capable of "lifting a family beyond their own achievements." It is "transformative": first, because it helps a family to improve their class standing, social status, the kind of community they live in, and the quality of their children's schools; and, second, because it is inheritable. The asset is handed down from one generation to the next, giving the homeowner's children a boost in standing and status they did not achieve by themselves.

Is homeownership equally transformative when it comes encumbered with limitations on the homeowner's equity? Although Shapiro does not consider this question himself, there are many critics of shared equity housing who would answer that only unencumbered homeownership, allowing individuals to realize the full wealth-generating benefit of their appreciating property, is capable of transforming the lives of lower-income families, especially African-American families whose lack of assets is part of what keeps them poor.

There are two problems with this criticism, aside from the lack of evidence substantiating it. First, it fails to ask whether other aspects of homeownership might be just as important as wealth creation in improving the lives of low-income families. A case might be made, for instance, that what transforms a family's life the most, when moving from renting to owning, is the right to stay put (security) or the right to use and improve one's living space free of the dictates of another (control). Adhering more closely to Shapiro's definition of a transformative asset, a case might also be made that homeownership bestows a host of social advantages (status), financial advantages (taxes, credit, and collateral), locational advantages (better schools, etc.), and intergenerational advantages (legacy) that collectively have a much greater impact on a family's day-to-day life than the realization of equity gains when a home is eventually resold. Since all of

these rights and advantages accrue to the owners of shared equity housing, as well as to their heirs, there is reason to believe that owning a resale-restricted home may be transformative to a similar degree as owning a market-rate home.

The second problem with the argument that the transformative potential of homeownership is undermined by limiting a homeowner's equity is the dubious assumption that there is a "tipping point" in wealth creation, where "too little" a return on one's housing investment makes no difference to a family's class standing or social status, while "just enough" catapults a family to a higher level. Even if true, nobody really knows where this tipping point might be.[208] Absent any evidence one way or the other, there is as much reason to believe that the amount of wealth accruing to the owners of shared equity homes will be sufficient to tip the scales toward transformation as to believe the critics' contention that only unlimited gains from market-rate homes can cause this salubrious result.[209]

If the transformative effects of homeownership are caused by advantages of property other than wealth or by amounts of wealth less than what the critics of shared equity housing presume to be necessary to achieve those effects, then maximizing how much each individual can earn becomes a lower priority for an anti-poverty strategy than maximizing how many individuals can be helped into the ranks of homeownership. Spreading the wealth becomes as important as creating it. When the burden of proof no longer rests entirely with those who would limit a homeowner's equity, the debate over wealth creation becomes a bit more balanced. Advocates for shared equity housing must still show why the modest gains they would allow are not "too little," but their critics are called to task as well, for they must show why the market gains they would allow are not "too much."

### Community Wealth: Weighing the Pros and Cons

The best way to spread the wealth of homeownership, according to the advocates and sponsors of shared equity housing, is to ensure that individuals pocket only that portion of their property's equity which they themselves had a hand in creating. The equity created by society or contributed by government (or by private donors) stays with the property, reducing its price and increasing its affordability for successive generations of low-income homebuyers. By preserving the community's wealth, in other words, the number of households who are given a shot at individual wealth is increased.

Evidence for the claim that shared equity housing expands access to homeownership has already been considered under the rubric of *Affordability.* What has not yet been considered is evidence for the claim that these alternative models of tenure are effective in preserving the community's investment in affordable housing. Are the subsidies that go into creating affordable housing retained for the benefit of a larger community of future homebuyers, or is the value of these subsidies diminished over time?[210]

There are three ways this question might be addressed: Researchers might look into the rate of mortgage defaults, comparing the frequency with which public subsidies are lost in foreclosures involving shared equity housing versus foreclosures involving market-rate housing. Researchers might also look into the long-term value of public (or private) subsidies invested in shared equity housing, examining whether the wealth that remains in the housing grows or shrinks across multiple resales. And researchers might look into the re-subsidization of assisted housing, comparing the additional investment that is needed to assist the same number of units when subsidies are not retained. Very little of this research has been done.[211]

Mortgage defaults among LECs and CLTs were previously considered under *Stability*, where some evidence was presented suggesting that these forms of homeownership have experienced lower default rates than their market-rate counterparts. Worthy of special note is the stellar performance of cooperative housing under the federal Section 213 program. The Section 213 program has never required a credit subsidy from the federal budget. What's more, the program "has had so few defaults that it has been able to refund pooled mortgage insurance premiums to the cooperatives that paid them" (Cooperative Housing Coalition, 2001: 29).[212]

The only explicit attempt to gauge the continuing value of the public's investment in shared equity housing was done by Davis and Demetrowitz (2003). They compiled a list of the public subsidies committed to each limited equity house or condominium resold through a local community land trust between 1988 and 2002.[213] To test the claim of retention, they compared the value of these subsidies at two different points in time: when a property was initially purchased and when that same property was eventually resold. They asked three questions: Among the 97 resales, were there cases where the community's investment was lost? Were there cases where the community's investment was eroded? Were there cases where the loss or erosion of these subsidies required an additional investment of the community's wealth to preserve the affordability which these subsidies were supposed to buy?

They found only two instances where a public subsidy was lost in its entirety. Both were foreclosures. There were 30 other cases (out of 97 resales) where the subsidy invested in a house or condominium had a value at the time of resale that was lower than when the home was purchased, meaning there had been some erosion in the community's investment. This happened not because homeowners pocketed a portion of the subsidy, but because the homes themselves had not held their value between purchase and resale. Even so, the impact on affordability was minimal. Only in one case did there occur both a decline in the value of a home's subsidy and a decline in the level of a home's affordability. Only in eight cases, including the two foreclosures mentioned above, were additional subsidies put into homes where the value of the original subsidy had declined. Ninety-two percent of the time, when a CLT home changed hands, enough of the community's original investment remained in the property so as not to require an additional infusion of public resources to preserve that property's affordability.[214]

The only other housing studies to focus on the preservation of community wealth are those that compare policies of subsidy retention and subsidy recapture. A financial analysis commissioned by the City of Portland (OR), for example, concluded that a "permanent subsidy is more economically effective than subsidy recapture" (Sacon, 1996: 35). An earlier study by Cohen (1994), examining data from San Francisco, Boston, and San Mateo, concluded that long-term restrictions on the resale of privately owned housing are much better at preserving a municipality's investment in affordable housing than programs that recapture those subsidies and re-loan them to other first-time homebuyers of market-rate housing. In her words:

> Subsidy recapture does not measure up, not even to the minimal standard that it sets for itself of "recycling" and protecting a pool of public subsidies. Public dollars are better protected through subsidy retention, leveraged over time into greater and greater community wealth.

Although these conclusions contradict those critics of shared equity housing who say that subsidy recapture is "just as effective" as subsidy retention (but more politically palatable), a more subtle line of criticism is less easily refuted. While conceding that shared equity housing is effective in retaining public subsidies, some critics argue that this is an unacceptably passive form of public investment. Subsidies are locked into particular properties for a particular use for far too many years. As conditions change, these precious resources are unavailable to meet new needs or to take advantage of new opportunities. A more flexible, entrepreneurial approach is needed. Government should be able to recapture these subsidies after a short period of time so they can be reinvested elsewhere, either recycled into residential projects in neighborhoods with greater needs or reallocated into nonresidential projects having a higher priority, like job creation or downtown redevelopment.

At issue here is not the effectiveness of shared equity housing as a vehicle for retaining public subsidies. The challenge is to retention itself. This is a debate that pits one social good against another, where affordable housing must vie with any number of worthy competitors for its fair share of the public purse. The performance of shared equity housing in preserving community wealth is almost beside the point. It does what it promises to do but, in the eyes of some critics, this is not a promise that should be kept.

## Performance Standard 4: Involvement

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|---|---|
| **Individual Involvement** | Social bonds and collective action are nurtured *within* shared equity housing. |
| **Community Involvement** | Civic engagement is expanded *outside* of shared equity housing. |

Involvement is the fourth standard by which the performance of shared equity housing may be judged. These models are claimed to be incubators for interpersonal relationships and mutual interests among those who share the same form of tenure, nurturing the growth of "social capital." If these models perform as promised, the owner-occupants of deed-restricted homes, community land trusts, and limited equity housing cooperatives will regularly interact on the basis of residential interests they hold in common. They will work together to preserve and to improve their shared equity homes. They will participate in governing whatever organization is charged with responsibility for safeguarding the security, amenity, and affordability of those homes. Energized and empowered by the experience of working together to operate their housing, they will also look outwards, involving themselves in the politics, block associations, watch groups, and civic activities of the society that surrounds them. These models can be deemed to have been effective in delivering and balancing their promised benefits, in other words, when the residents of shared equity housing are actively involved with their peers in running their housing and actively engaged with their neighbors in bettering their community.

### Individual Involvement: Weighing the Pros and Cons

"Four factors representative of social capital" have been proposed by Saegert and Winkel (1997) to gauge the extent of individual involvement in multifamily housing. Involvement may be considered high when homeowners participate in activities of their residents' association; when they forge informal social relationships with other residents; when they participate in the leadership, management, and maintenance of their residential community; and when they are satisfied that other residents are also collectively and effectively contributing to the physical and financial well-being of their housing.

By these standards, individual involvement in LECs has been repeatedly shown to be superior to other forms of multifamily rental housing. Leavitt and Saegert (1990: 231), for example, observed low-income members of LECs in New York City being closely bound to each other in unique ways because of their collective experience in the "shaping of and making of place."[215] Saegert and Winkel (1997; 1998), comparing different ownership structures in multifamily buildings, found that LECs produced the highest levels of social capital, while ownership by a city agency or by a private landlord produced the lowest. Other studies have reported similar findings. Focus group discussions with members of 17 LECs scattered throughout Chicago, for instance, confirmed the presence of "strong inter-resident networks, which can provide a social support structure for members" (CMHN, 2004: 33). A resident survey of LEC members in Burlington, VT, conducted by Gent, Sawyer, Davis, and Weber (2005: 33), found 94.6% of them reporting they were either "very involved" in managing and operating their housing co-ops (55.4%) or "somewhat involved" (39.2%). High levels of participation were also reported in an earlier survey of resident leaders from 271 housing cooperatives in California (Bandy, 1993).[216]

Although greater involvement is most commonly claimed for cooperative housing, other models of shared equity housing may deliver a similar benefit. Community land trusts, for example, and many community development corporations sponsoring deed-restricted housing are community-based organizations with governing boards and an active membership that include both people living in their housing and people residing nearby. Many of these organizations go to great lengths to involve their members in their activities and governance (cf. Davis, 2005). The same sort of social bonding and collective action that is claimed for cooperative housing, therefore, is often claimed for these other shared equity models as well.

There may be reason to expect a lower level of individual involvement in these other models, however. CLTs provide fewer opportunities for homeowners to involve themselves in the organization that developed their housing or to interact with one another than most LECs provide. CLT homeowners have a common *political* interest in the organization that owns the land beneath their feet, but they do not have a common *ownership* interest. CLT homes are individually owned and individually operated. They are often located far apart, scattered throughout a neighborhood, city, or region. Except where CLT homes are clustered in a larger development, there may be few times when a CLT's homeowners are in the same place at the same time, and few chances for collective action.[217]

The owner-occupants of deed-restricted housing would appear to have even fewer mutual interests and even less opportunity for involvement. In many places, there may be nothing more that ties these homeowners together than a distant municipal agency, charged with administering contractual controls over the use and resale of hundreds of resale-restricted homes dispersed over a large geographic area. Connecting with each other or participating in the activities or governance of this administrative agency would seem unlikely.[218]

The only study of individual involvement in shared equity housing other than limited equity cooperatives seems to be one that was done by Levinger (2001). In a national survey of CLT homeowners, 44% reported having volunteered in their community land trust; 32% said they had served on a land trust committee; 24% reported having served on the board of their local land trust; and 35% reported having participated in other types of land trust activities in the previous six months. Overall, 55% of the respondents in Levinger's study had participated in at least one of these ways.

Critics of shared equity housing generally concede that these models do nurture and require higher levels of involvement from individuals who own and occupy such housing. They question whether this is necessarily a good thing, however, especially for low-income people who may have neither the extra time nor the necessary skills to take on the responsibilities of managing and governing a multiunit housing project.[219] Too many contentious meetings, moreover, or too many years of mounting resentment over neighbors who do less than their rightful share are more likely to deplete social capital than to nurture it. The involvement demanded by shared equity housing is not a benefit, in the eyes of these critics, but a burden.

The ability of low-income people to manage, maintain, and govern MHAs, LECs, and other shared equity housing is well documented.[220] So, too, are the benefits that are individually and collectively realized by residents of LECs when social capital is high, including lower crime, better maintenance, and more social supports for the persons who inhabit such housing.[221] At the same time, it is widely acknowledged that the involvement demanded by some models can have a darker side. In their case study of housing cooperatives in Toronto, for example, Cooper and Rodman (1992: 228–231) described frequent bickering and occasional battles between co-op members and their boards. Saegert et al. (2004: 19) have noted a "downside to living in an LEC," including "time invested, hassles, lack of privacy, frustration with other tenants' low participation, and more trouble in general than renting." They also found that residents who live longer in an LEC tend to have less trust in their neighbors. Since Saegert and her colleagues had just concluded that "when residents trust each other more they are more likely to participate in issues related to the building" (Ibid., 17), the implication is that people who live longer in co-op housing may be less likely to involve themselves in collective efforts to manage and govern it. In the same vein, Miceli, Sazama, and Simans (1994: 474) and Sazama and Willcox (1995) have described the ever-present problem of free riders in LECs, where a few people do most of the work – eventually burning out from the effort – while others do nothing.

In sum, there is reason to believe that shared equity housing does nurture social capital, at least in the more collective forms of shared equity housing. More research is needed before the same can be said about the more individualistic forms, like CLTs and deed-restricted housing. Furthermore, while the benefits of involvement have been studied, the burdens have not. More research might be directed here as well.

## Community Involvement: Weighing the Pros and Cons

The challenge to the claim of community involvement is that homeownership is more likely to turn an individual's energies and concerns inward than outward. This may be especially true for the owners of shared equity homes, according to some critics, because of the extra demands that are made on an individual's time: attending meetings, resolving disputes, and participating in the kinds of collective action that are needed to maintain, manage, and govern such housing. Instead of struggling for better public facilities, better social services, and a higher quality of life for everyone who resides in a particular locale, the owner-occupants of shared equity housing are more likely to be tending to their own turf. Shared equity homeownership is a recipe for self-absorption, not civic engagement.

Most evidence suggests, on the contrary, that homeowners are generally more engaged in civic affairs than renters. As Rohe, Van Zandt, and McCarthy (2002: 395) concluded:

> The empirical evidence on the relationship between homeownership and participation in both voluntary organizations and local political activity is both extensive and consistent. After controlling for income, education, and other socioeconomic characteristics, homeowners are indeed more likely than renters to participate in voluntary organizations and engage in local political activity. [222]

One theory for why homeowners exhibit higher levels of civic engagement is that they are seeking to protect the economic investment in their homes. If true, this theory would suggest that people who live in resale-restricted homes, where the return on their investment is limited, might participate less than people who live in market-rate homes. But, as Rohe, Van Zandt, and McCarthy (2002: 397) point out, "studies that tested to see whether investment orientation influenced participation rates found no support for this proposition." Saegert and Benitez (2005) confirm, in fact, that: "studies have found that LEC residents participate more in neighborhood organizations, live in their neighborhoods longer, and have a greater desire to stay, compared to other low-income renters."[223] A recent survey of low-income residents of multiunit rental housing and multiunit LECs developed and managed by the same nonprofit housing organization asked residents whether the level of their involvement in neighborhood activities had changed since moving into their apartments (Gent, Sawyer, Davis, and Weber, 2005: 40). Among the co-op members, 39.7% reported that they had become more actively involved since moving into their LEC, compared to 14.5% of the renters. Only 7.4% of the co-op's members said they had become less involved, compared to 24.5% of the renters.[224]

What is there about living in this particular form of shared equity housing that seems to contribute to heightened involvement in neighborhood activities? Saegert et al. (2003: 20) pose one possibility:

> Limited equity cooperatives help to create a space to reconnect local activism with the neighborhood by enforcing values of civic participation and creating spaces for interaction. The social and leadership skills that are learned in LECs increase residents' resources and motivation for civic participation.

Similarly, the Cooperative Housing Coalition (2001: 2) suggests that the involvement of co-op members in one sphere of activity may translate into engagement in another:

> They have learned to participate in the small democracy that governs their housing and they are not about to be excluded from the larger public debate. Cooperatives provide their members with proof that they can exercise power over an important element of their lives. Perhaps it is the knowledge of this power that propels cooperative homeowners into a significantly higher level of involvement in community activities and a strikingly lower level of isolation from the world around them than renters.

These are speculations, however. The reasons behind higher participation rates among co-op members, like the reasons behind the higher rates of participation among

market-rate homeowners, are not clear. It is also unclear whether participation might vary among different forms of shared equity housing. Are the owner-occupants of deed-restricted housing or CLT housing as likely to be engaged in the politics and voluntary associations of their surrounding neighborhoods as the owner-occupants of LECs seem to be? Furthermore, it has not been established for sure whether the owners of shared equity housing, whatever its form, are as likely to be engaged in civic affairs as the owners of market-rate housing. All of these propositions are worthy of further investigation.

## Performance Standard 5: Improvement

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|---|---|
| **Individual Improvement** | Personal mobility is enabled. |
| **Community Improvement** | Community development or community diversity is promoted. |

Improvement is the fifth standard by which the performance of shared equity homeownership may be judged. If these nonmarket models perform as promised, they will serve as platforms for personal mobility. The lives of those who own a shared equity home will improve – while occupying it, when reselling it, or both. Conditions in the surrounding neighborhood will also improve. In more impoverished communities, shared equity housing will make a significant contribution toward enhancing the collective quality of life. In more affluent communities, shared equity housing will make a significant contribution toward increasing economic and racial diversity. These models can be deemed to have been effective in delivering and balancing their promised benefits, in other words, when individuals and their communities are transformed for the better.

### Individual Improvement: Weighing the Pros and Cons

It is often difficult to separate the claims for individual improvement from the claims for individual wealth, since both may involve more dollars being put into the pockets of the poor. Mobility is more than money, however. There are improvements that shared equity housing can cause in the personal lives of those who own and occupy such housing that occur, it is argued, even if the money they earn when reselling their property is rather modest.

This particular claim, as we have already seen, flies in the face of the criticism that only market-rate homeownership, unencumbered by the resale controls that come with shared equity homeownership, is capable of transforming the lives of low-income people. Equity limitation, in the eyes of these critics, is a barrier to mobility. The owners of shared equity housing cannot better their lives or the lives of their children because they are prevented from accumulating the kind of wealth that makes mobility possible. Their homes are burdened by so many eligibility, occupancy, and affordability restrictions, moreover, that their owners will have difficulty selling them. If eventually successful in finding buyers, they will have difficulty purchasing homes of comparable quality. They will find it next to impossible to purchase market-rate homes of better quality or to move out to neighborhoods of better quality. In a word, they are stuck – economically, socially, and geographically.

There is some evidence suggesting the opposite may be true. LECs, for instance, have been repeatedly shown to improve the living conditions of the residential environment occupied by low-income residents.[225] The owner-occupants of housing cooperatives have been found to have "higher average incomes as a result of upward economic mobility than residents of physically similar rental properties" (Cooperative Housing Coalition, 2001: 11). In a study of LECs in Burlington, VT, co-op members were asked to assess whether various aspects of their lives had improved while living in their LEC. Among those who responded to this question, 29.2% reported a gain in employment since moving into their housing co-op; 22.4% reported that one or more members of their household had pursued additional education or job training; 18.2% noticed a change for the better in their children's performance in school; 36.5% reported an increase in household savings; and

77% reported an increase in their "general happiness" (Gent, Sawyer, Davis, and Weber, 2005: 34–39).[226]

A national survey of CLT homeowners reported a similar pattern of personal improvement (Levinger, 2001: 13). Overall, 86% of the respondents agreed with the statement, "Since I purchased my land trust home, I feel better about myself"; 55% agreed with the statement, "Since I purchased my land trust home, my children are doing better in school"; 53% agreed with the statement, "Since I purchased my land trust home, my children are healthier"; and 61% agreed with the statement, "Since I purchased my land trust home, I have been healthier."

Although such findings must be taken with a grain of salt, since they depend entirely on a resident's subjective assessment of being "better off" in housing provided by an LEC or a CLT,[227] they do suggest that the transformative effects frequently attributed to homeownership may not be confined to market-rate housing alone. The effect that has received the most attention, in this regard, is the relationship between tenure and childhood outcomes. The children of homeowners have been repeatedly and consistently found to do better in school, to be more likely to graduate, and to be less likely to be involved in crime, idleness, or teenage pregnancy than the children of renters. No statistically significant link has been found in any of these studies, however, between these desirable childhood outcomes and the level of a homeowner's equity. Instead, most researchers have been inclined to attribute the favorable effects of homeownership to the reduced residential mobility of homeowners, a benefit unaffected by the resale restrictions of shared equity housing.[228]

Not only do things seem to get better for the families who *stay* in shared equity housing; things may also improve for those who *leave.* Contrary to the notion that these homeowners are "stuck" in an inflexible form of tenure that allows neither lateral mobility into comparable housing in other neighborhoods nor vertical mobility into the conventional homeownership market, at least one study suggests that the owners of resale-restricted housing may have more success in moving out and moving up than is commonly presumed. Davis and Demetrowitz (2003:22–23) examined the subsequent housing situations of 97 CLT homeowners who resold their limited equity houses or condominiums and moved into other housing. Few of them remained in their old neighborhood. Over 80% moved to another neighborhood in the same city, to a suburban town in the same county, to another county in the same state, or to another state. What kind of housing did they move into? Of the 81 homeowners whose subsequent housing situations could be determined, 60 of them (74%) purchased a market-rate home within six months of reselling their CLT home. Four others (4.9%) exchanged one CLT home for another. Sixteen (19.8%) became renters after leaving the CLT, and one homeowner died (1.2%). In sum, the affordability restrictions encumbering these CLT homes prevented neither the movement of families to other locations nor their movement into the market.

The upward mobility achieved by so many low-income homeowners leaving the shared equity housing of the BCLT is even more impressive when seen in the light of the downward mobility exhibited by so many low-income homeowners in market-rate housing. The "high likelihood that lower-income families will slip back into renting after attaining homeownership," discovered by Boehm and Schlottmann (2004: 33), and the 53% failure rate among first-time, low-income homebuyers, discovered by Reid (2005), stand in sharp contrast to the much smaller percentage (19.8%) of BCLT homeowners who returned to renting upon leaving the BCLT.

A handful of studies do not come close to confirming the claim that shared equity homeownership enables mobility, of course. More research is clearly needed into both the monetary and nonmonetary improvements in people's lives that occur as a result of inhabiting such housing. What these few studies do suggest, however, is that the critics of LECs, CLTs, and deed-restricted housing should be less quick to assume that equity limitation is necessarily a barrier to personal improvement. Each side has a long way to go before proving its case.

### Community Improvement: Weighing the Pros and Cons

The minimalist claim for community improvement is that shared equity housing can make a positive contribution

toward rebuilding the residential property of neighborhoods in which the poor have been heavily concentrated, as well as toward diversifying the residential population of neighborhoods from which the poor have been historically excluded. The more substantial claim is that deed-restricted housing, LECs, and CLTs not only succeed in promoting development and diversity, but do so because of the way in which these models allocate and regulate the rights of ownership.

As a tool for promoting community development, the sponsors of shared equity housing have sometimes been tapped to play the leading role in rebuilding an impoverished area. On other occasions and in other communities, they have been cast in a supporting role, contributing a housing development component to a broader strategy for a neighborhood's revitalization. Community land trusts are more likely to play the former role; LECs and deed-restricted housing are more likely to play the latter. CLTs, for example, have been the principal players in revitalizing impoverished neighborhoods in Syracuse, Durham, and Washington, DC.[229] They have played the principal role in planning and redeveloping entire neighborhoods in Albuquerque and Boston.[230] They have partnered with other nonprofit, for-profit, and governmental organizations in implementing comprehensive plans for the revitalization of neighborhoods in Burlington and Duluth.[231] LECs and deed-restricted housing, by contrast, have rarely been the main vehicles for a neighborhood's revitalization, yet both forms of shared equity housing have made their own contributions to community development. Years ago, LECs financed through the federal government's 221(d)(3) program were key components of urban renewal plans in Chicago, Cincinnati, and elsewhere.[232] More recently, LECs have been extensively used in New York City to acquire, convert, rehabilitate, and return tax-delinquent apartment buildings to the tax roll.[233] LECs have been used to revitalize public housing (and their surrounding neighborhoods) in cities nationwide.[234] Deed-restricted homes, as well as housing developed on leased land, have been used in the massive redevelopment of the Lowry Air Force base in Denver.

As a tool for promoting community diversity, CLTs, LECs, and deed-restricted housing have been widely used to produce and preserve affordable housing in neighborhoods, suburbs, and towns where people with lower incomes would not otherwise be able to live. Deed-restricted housing, in particular, has been the tenure of choice for many public agencies and private developers when meeting the inclusionary requirements of a municipal ordinance or the "fair share" targets of a regional plan. In states like New Jersey, California, and Massachusetts, for example, in cities like Boulder and Boston, and in counties as far apart as Montgomery County, MD, and King County, WA, nearly all of the owner-occupied housing created through inclusionary programs has been made up of deed-restricted houses, townhouses, and condominiums.[235]

While deed-restricted housing has been the dominant player in opening up residential enclaves to greater economic and racial diversity, there has been growing interest in recent years in using LECs and CLTs for the same purpose. The regionalization and suburbanization of the CLT movement, in particular, has created new opportunities for penetrating enclaves and expanding fair share. A number of newer CLTs and a handful of older CLTs have expanded the boundaries of their service areas far beyond the cities in which they were originally established. A number of suburban communities have supported the creation of CLTs as a means of meeting fair share obligations or "smart growth" expectations. The Burlington CLT, for example, has developed LECs and limited equity houses on leased land not only in Burlington, VT, but also in affluent suburbs and rural towns within a three-county region. Thistle Community Housing has developed CLT housing not only in Boulder, CO, but also in surrounding towns. In Rhode Island and Delaware, regional CLTs are being developed which will monitor and enforce affordability restrictions imposed by state and municipal agencies for housing projects scattered throughout these small states. CLTs in the suburban counties surrounding Minneapolis and St. Paul have become vehicles for implementing regional fair share targets imposed by the Metropolitan Council.[236] CLTs operating within Portland, OR's regional growth boundary have promoted permanently affordable, owner-occupied housing as a means of addressing some of the negative externalities of smart growth.[237]

Not enough has been done to measure the success of any of these models in remaking the places in which they operate. Too little research has been conducted into the wider impact of deed-restricted housing, LECs, and CLTs beyond the walls of their own domains, a problem mentioned previously during the discussion of community stability. Yet, from the documentation that does exist, these models do seem to make a difference. They have contributed to development or diversity in a variety of settings. Their communities have been changed for the better.

It is difficult to say, however, which aspects of shared equity housing should be credited with these changes. The larger claim for community improvement is that tenure matters. Deed-restricted housing, LECs, and CLTs are claimed to have special advantages when it comes to developing or diversifying residential communities. These models make a difference, in other words, because they themselves are different. But that is not a claim that goes unchallenged. Even someone as sympathetic to shared equity housing as DeFilippis (2004: 109), after documenting the ways in which an MHA in Stamford, CT, and a CLT in Burlington, VT, have "partially transformed" their neighborhoods, is moved to admit that "it is unclear whether their role in place-making was the result of a form of ownership of the housing, or the result of rather traditional organizing efforts that could have been undertaken by any CDC, regardless of how they structure the tenure of their housing."

The only evidence we have that tenure really does matter in developing and diversifying residential communities is indirect. Equity limitation has been shown to preserve access to homeownership for persons who would otherwise be excluded from neighborhoods with rising housing prices. To the extent that a rising rate of homeownership is a contributor to community development, therefore, and to the extent that a lasting supply of affordable housing is a contributor to community diversity, the structure of ownership of deed-restricted housing, CLTs, and LECs may be credited with improving their communities. Similarly, the pooled risks and shared responsibilities that are characteristics of LECs and the durable right to intervene in cases of mortgage default that is a characteristic of CLTs have been shown to be effective in backstopping the residential security of first-time homeowners. To the extent that such security enhancements protect homeownership gains which a community has achieved, therefore, or to the extent that these enhancements increase the likelihood that low-income persons who have "moved to opportunity" will succeed,[238] models of shared equity housing may be credited with promoting both development and diversity.

These are hypotheses more than confirmations, however. When a community containing shared equity housing has changed for the better, tenure may be posited as a possible cause. The different way in which deed-restricted housing, CLT housing, or LEC housing is owned and operated may have engendered these changes. But, as the earlier quote from DeFilippis suggests, there may be other explanations. These improvements may have occurred not because of tenure, but because of the capital invested, the people mobilized, the jobs created, the services provided, or the pressure exerted on the powers-that-be by the nonprofit sponsor of shared equity housing – activities that are hardly unique to CLTs, LECs, or the organizations developing deed-restricted homes. The third possibility is that both are true: The improvements observed in communities in which these nonmarket models are present are a consequence of combining an unconventional structure of homeownership with a conventional array of organizational strategies for developing or diversifying a residential neighborhood. Sorting out the relative contribution to community improvement that is made by each of these factors is one of the many challenges awaiting the next round of research into shared equity homeownership.

# VI. Epilogue

## Rebuilding the Housing Tenure Ladder

*"Third sector housing has received little attention outside the ranks of those who labor day to day to make it a reality. Such neglect has not stopped the spread of privately owned, socially oriented, price-restricted housing, nor has it discouraged hundreds of nonprofit, community-based organizations from developing such housing. Furthermore, it has not prevented dozens of municipal governments from devoting an increasing proportion of their tightening budgets for affordable housing to nonmarket models and nonprofit organizations dedicated to perpetuating the hard-won affordability of publicly assisted, privately owned housing. On the other hand, because national attention and national resources have been directed elsewhere, this third sector housing movement has remained relatively small in the United States. Being out of the spotlight has slowed the process of evaluation, refinement, and legitimation that transforms an innovation into an institution. It has delayed the day when the preservation of affordability is as common a priority of public policy as the construction of new housing or the rehabilitation of old." (Davis, 1994: 25)*

Twelve years after publication of the passage quoted above, the day has still not arrived when a commitment to durable affordability is universally a "priority of public policy." Although the number of jurisdictions requiring long-term controls over the use and resale of owner-occupied housing created with the assistance of public dollars or public powers has been rapidly rising, the total number of resale-restricted homes has remained relatively small. The "process of evaluation" has also been slow, as the present study has amply demonstrated. Despite the number of governmental agencies and nonprofit organizations that are now utilizing the contractual controls and organizational vehicles of third sector housing, these innovative models have yet to become an institution on a par with other tenures long favored by the market and the state.

What can no longer be said is that third sector housing remains "out of the spotlight." More conventional forms of tenure are still the leading ladies of public policy. They still command the lion's share of national attention and national resources. But they no longer have the stage all to themselves. The performance and potential of a new generation of tenures is being noticed at last. A mounting chorus of critical opinion is now suggesting that the time has come to "redefine homeownership" (Hockett et al., 2005), to "rethink rental housing"

(Retsinas and Apgar, 2005), and to expand the use of "alternative tenure options that fall between rental housing and homeownership" (National Housing Conference, 2005: 12–13). After waiting in the wings for many years, third sector housing is now reaching a broader audience and winning wider support.

This has been a spur to innovation at both ends of the tenure continuum. We have concentrated on homeownership here, but it should be noted that new models of private, nonmarket rental housing have also been appearing on the national scene. Most are designed to give tenants more security while preserving the affordability of the housing that is theirs. Some give tenants a greater degree of control over management and maintenance. A few, by establishing dedicated escrows or individual development accounts tied to residency in a particular project, enable tenants to accumulate a small amount of wealth. Thus, at a time when the sponsors of shared equity homeownership continue to tinker with the design and structure of their models, refining those features that reduce risk, share responsibility, enhance security, build wealth, promote mobility, and preserve affordability, many sponsors of nonprofit rental housing are engaged in a very similar enterprise.

As these hybrid forms of tenure quietly proliferate, the prospects improve for slowly rebuilding a housing tenure ladder that increasingly delivers neither security nor mobility. In too many communities there are broken rungs at the bottom, where persons who are homeless or temporarily housed find it harder to step into secure rentals that are decent and affordable. There are missing rungs in the middle, where persons of modest means find it harder to cross the yawning gap between renting and owning. There are fragile rungs high and low on which are precariously perched the lower-income occupants of millions of units of publicly assisted housing with short-term affordability controls, millions of units of market-rate housing made temporarily affordable through adjustable rate mortgages, and millions of mobile homes on lucrative lands that may be profitably sold by their absentee owners at a moment's notice. Even the grip that low-income and moderate-income homeowners have on the housing that is theirs can become tenuous in a time of rising interest rates, rising utility costs, and rising property taxes.

Third sector housing is hardly a corrective for every defect. Even the most constructive innovations can be overwhelmed by larger social, economic, and political forces that are warping and weakening the housing tenure ladder, nationally and locally. And, in most communities, these private, nonmarket models are too new and their holdings too few to have yet had more than a minimal impact on the locality's overall housing problem.

Where third sector housing approaches a critical mass, however, in both variety and quantity, a less wobbly system of affordable housing is created, one that promises more security and more mobility than ever before. Low-income and moderate-income people are offered housing that is buttressed with social and operational supports, strengthening the hold they have on their homes, in good times and bad; preserving the affordability built into their homes, for this generation and the next. They are able to choose a bundle of rights and responsibilities that more closely matches the current state of their finances and abilities. As their circumstances change, whether for better or for worse, they can more easily move from one form of tenure to another – in smaller steps. Tenure is tailored to meet the needs of people, not the other way around. [239]

This is a vision that is neither impractical nor remote. Indeed, the foundation is already being laid for such a choice-enhancing system, with innovative models of shared equity homeownership and flexible forms of nonprofit rental housing regularly appearing amidst the rigid dichotomies that have historically dominated housing provision and housing policy in the United States. New rungs are being added to the housing tenure ladder in hundreds of communities. More resources are needed to bring these private, nonmarket models to scale. More research is needed to refine their design, improve their performance, and ensure their longevity. But public and private support for them is growing. There is reason to believe that the resources will be found and the research will be done, allowing them to play a larger role on the national stage. There are encouraging signs that third sector housing has finally arrived.

# NOTES

## Chapter One: Overview

1. "Third sector housing" was the name given by Davis (1994) to various forms of privately owned, socially oriented, price-restricted housing situated "beyond the market and the state." Within this sector, different models of nongovernmental, non-market housing are arrayed along a wide continuum. Toward the homeowner end of this tenure line, most of the "sticks" in a property's "bundle of rights" are possessed by its occupants. Toward the other end of the tenure line, most of these rights are held by someone other than the occupants – usually, a corporate landlord. Shared equity housing lies toward the homeownership end of this third sector continuum.

2. A short profile of the Massachusetts program "Homes for Good" can be found in Chapter Two.

3. A commitment to longevity rather than permanency will lead us, on occasion, to relax even the 30-year standard that has been selected as our rule of thumb for determining what to include in our working definition of shared equity housing. For example, we shall want to include homes with resale controls lasting somewhat shorter than 30 years if the clock on the control period is restarted every time that a home is refinanced or resold within this shorter time span. There is a degree of definitional gray, in other words, between the black-and-white extremes of affordability restrictions that are "too short" and those that are "long enough."

4. Shared appreciation financing has been much more common in England than in the United States, although American lenders have begun to show increasing interest. In England's "equity linked mortgages," a lender takes a stake in the equity of the property and lends less than the full amount required to buy the home. Interest is only charged on the amount of the loan, not on the full value of the property. When the property is resold, the lender receives payment in proportion to the amount of equity that the lender provided. Another type of "shared ownership" in England is administered by local Housing Associations. They purchase a portion of the value of a single-family home, often 50%. A registered social landlord (RSL) retains ownership of the remainder of the equity, for which the occupant is charged rent. The rent is set as a percentage of the affordable rent which the RSL would charge for a similar rented property, the percentage reflecting the percentage of the equity retained by the RSL (Conaty et al., 2003: 59, 61; Bramley and Dunmore, 1996). In the United States, a few private lenders have experimented with shared appreciation financing of single-family homes, but these experiments have yet to be widely adopted. The State of California ran a "shared equity" program for a number of years, which was eventually discontinued. Similar programs have been administered by the cities of San Diego, San Francisco, and Portland (OR). Several universities, including NYU, MIT, the University of Colorado, and Stanford, and several nonprofit organizations, including NorthBay Family Homes in Marin County, Faith Fund in Baltimore, and the Stardust Foundation in Phoenix, have also promoted forms of shared appreciation financing for first-time homebuyers.

5. On the other hand, where the lender's share of appreciation is committed to resubsidizing the same home for the next low-income homebuyer, there is an attempt at perpetuating the affordability of this particular property (or one like it). The problem, as discussed in Chapter Four, is that recaptured subsidies in a rising market, even when a public agency or nonprofit organization receives a share of appreciation at resale, are often insufficient to make the same homes affordable to subsequent homebuyers of modest means. Recaptured subsidies must be continually augmented; otherwise the capital pool out of which the shared appreciation loans are made is gradually depleted.

6. This is not true everywhere, of course. Move a hundred miles inland from either coast or move 50 miles outward from many metropolitan areas and moderate-income homebuyers may still find homes that are within their financial reach.

7. See, for example, Cooperative Housing Coalition (2000: 16–19); Davis (2000: 242–243); and Selby and Wilson (1988).

8. This phrase was first used by Saegert et al. (2003), describing the benefits of LECs in a gentrifying neighborhood in New York City.

9. Seven years later, Shapiro (2004: 183) was moved to declare more bluntly that "I see no means of seriously moving toward racial equality without positive asset policies that address the racial wealth gap."

10. In shared equity housing, a homeowner's ability to recover a portion of the cost of capital improvements and to realize a return on his or her initial investment will be regulated by the terms of the particular resale formula that encumbers his or her home. Various options for crafting a resale formula are discussed later in Chapter Three.

11. Most of the expansion in U.S. homeownership in recent years has been fueled by neither rising incomes nor falling prices, but by

the expanding use of "affordable" mortgages with adjustable rates. According to the Mortgage Bankers Association, 25% of all mortgages in the United States – 10 million – now have adjustable interest rates. And most of them have gone to people with subpar credit ratings. In 2005, 42.4% of the new residential loans closed in the United States were interest-only or payment-option adjustable rate mortgages; in California, the figure was nearly 60%. "Of the 7.7 million households who took out ARMs over the past two years to buy or refinance, up to 1 million could lose their homes through foreclosure over the next five years" (Knox, 2006). Also looming over the wealth prospects of low-income homeowners is the possibility that the real estate bubble is about to burst. Millions of heavily indebted homeowners may be left with negative equity, where the amount of their mortgage is higher than the value of their mortgaged home (Hudson, 2006).

12. See Sherraden (1991) and Mills, Patterson, Orr, and DeMarco (2004). Claims for the transformative effect of the small amounts of wealth accumulated through IDAs do not go unchallenged, however. See, for example, Bernstein (2003).

13. The subsidies put into this favored form of tenure are not always monetary. In addition to grants or low-interest loans, homebuyers of modest means may benefit, here and there, from a veritable cornucopia of public largess, including waivers of impact fees, donations of land, inclusionary exactions from private developers, subsidized infrastructure, and reductions, rebates, or deductions for local property taxes.

14. DiPasquale and Glaeser (1999); Rohe and Stegman (1994); Rohe and Stewart (1996); and Rohe, Van Zandt, and McCarthy (2002).

15. See, for example, Tempkin and Rohe (1998) and Wilson (1997). An excellent critique of the purported connection between social capital and community development, however, can be found in DeFilippis (2001).

16. Robert Putnam (1995) used the metaphor of a solitary bowler, as opposed to one participating in a bowling league, to describe what he saw to be a decline in social participation and civic engagement in the United States.

17. Rohe (1995); Rohe and Stegman (1993); Saegert and Winkel (1998); Saegert, Winkel, and Swartz (2002).

18. Unlike the claims for affordability and wealth, where there is a tension between the benefits accruing to individuals and the benefits accruing to a larger community, the benefits of involvement are considered complementary. A homeowner who bonds more closely with persons residing in the same shared equity housing community and participates more actively in the governance of that community is deemed more likely to participate in associations and activities outside of this residential enclave. Internal participation does not occur at the expense of external engagement. One nurtures the other.

## Chapter Two: Models

19. There may be other use restrictions, as well, including controls over improving, financing, or bequeathing the property. These and other durable controls over shared equity housing are discussed in detail in Chapter Three.

20. In common legal parlance, these covenants or options "run with the land." I prefer the term "run with the deed," since covenants in a mixed-income condominium project, where restrictions are imposed on some of the units but not on others, seldom encumber the project's underlying land. They encumber the unit deeds for a portion of the project's units.

21. If the size of the repayment obligation is large enough, relative to the property's market value, there is an incentive for the homeowner to abide by the use restrictions contained in the mortgage and, later, to convey the property to another low-income household at an "affordable" price. If significant appreciation occurs, however, and the property's value rises far beyond the repayment obligation, the homeowner will have an incentive – and the financial ability – to pay off the mortgage, either during the homeowner's tenure or at the time of resale, in order to remove restrictions on the property's current use and future price. To close this loophole, public agencies or private sponsors that make use of mortgages to enforce affordability have sometimes required not only repayment of the principal if a homeowner resells in excess of the "affordable" price, but payment of a share of the property's appreciation as well.

22. Community development corporations and other nonprofit housing developers have made increasing use of resale restrictions as well, even when not required to do so by public funders. Most CDCs, on the other hand, continue to be more comfortable with requiring long-term affordability for rental housing than for owner-occupied housing.

23. The Moderately Priced Dwelling Unit ordinance, enacted by Montgomery County, MD, in 1973, is often described as the "the oldest and most productive" inclusionary program in the United States (Brown, 2001: 5), even though Fairfax County's inclusionary program was created two years earlier. This is probably because Fairfax County's program was invalidated by the Virginia Supreme Court a few years after its creation.

24. New Jersey's Supreme Court provided a legal rationale for inclusionary zoning in its Mt. Laurel decision of 1975. In a second decision, dubbed Mt. Laurel II, the Court explicitly endorsed "mandatory set-asides" in 1983, encouraging municipalities to require the developers of market-rate housing to make a specified percentage of their units available at an affordable price (rent or sale) for low- and moderate-income households.

25. The first cities in California to enact inclusionary zoning were Davis in 1974 and Irvine in 1977 (although, even without an ordinance, Irvine negotiated an inclusionary set-aside with the

town's principal developer as early as 1971). The first countywide program was enacted by Santa Cruz County in 1978. By 1996, there were 75 inclusionary housing programs in California. By 2003, there were 107, representing one-fifth of all localities in the state (Calavita, 2004; CCRH/NHA, 2004). In Massachusetts, 20 municipalities had adopted zoning provisions with mandates or incentives for affordable housing by 1988. By 1999, there were 107, representing nearly one-third of the state's municipalities (Herr, 2002).

26. In the early years of Montgomery County's program, affordability controls lasted only five years. In 1981, as thousands of inclusionary units began shedding their affordability restrictions, county officials realized that five years was not long enough and increased it to ten years. This longer period also proved, however, to be far short of "long enough." By 1999, affordability restrictions over two-thirds of the 10,600 inclusionary units created through Montgomery County's program had lapsed (Brown, 2001).

27. See *Requirements and Procedures for the Moderately Priced Dwelling Unit Program*, issued by County Executive, Regulation No. 13-05AM, Register Vol. 22 No. 5. Effective date: September 28, 2005. Complete text available at: http://www.montgomerycountymd.gov/content/dhca/housing/housing_P/mpdu/pdf/execreg13-05am.pdf

28. The state's Redevelopment Law begins at Section 33000 of the California Health and Safety Code. Affordability standards for ownership units assisted by redevelopment agencies are found in Section 50052.5. These codes, plus Section 6920 of Title 25 of the California Code of Regulations, set the maximum housing prices for units that must remain affordable to very low, low, and moderate income households.

29. There are two different reasons for this create-and-forget mentality. In some cases, it is rooted in the belief that deed restrictions are "self-enforcing," so no one in government needs to pay attention to the affordability of these units after they are developed. In other cases, the public agency that helped to create deed-restricted units has delegated responsibility for monitoring and enforcing resale controls to multiple entities outside the public sector. Each delegated entity tracks the units under its control, but no one takes overall responsibility for tracking all of the jurisdiction's deed-restricted units.

30. All three of these exemplary programs are profiled in the present chapter.

31. A few examples of CLTs with a citywide service area include: the Kulshan CLT (Bellingham, WA); the Portland CLT (Portland, OR); the Northern Communities CLT (Duluth, MN); and the Chicago CLT, presently under development. CLTs covering one or more rural (or suburban) counties include: the Laconia Area CLT (NH), the Central Vermont CLT (VT), the Clackamas County CLT (OR); the Housing Land Trust of Cape Cod (MA); the Housing Land Trust of Sonoma County (CA), and the Orange Community Housing Land Trust (NC). CLTs with a regional service area that spans both urban and rural communities include: the Burlington CLT (Burlington, VT); First Homes (Rochester, MN); Thistle Community Housing (Boulder, CO); and the statewide CLTs presently being developed in Delaware (Diamond State CLT) and Rhode Island (Community Housing Land Trust of RI).

32. CLTs may also be asked by a public agency or a nonprofit partner to preserve affordability for housing not located on the CLT's land, monitoring and enforcing resale controls contained in a deed covenant rather than a ground lease. The Delaware State Housing Authority, for example, is planning to contract with the Diamond State CLT to provide administrative oversight for affordability covenants imposed by DSHA on condominiums that are not on leased land. Similarly, the Chicago CLT, acting on behalf of the City's Department of Housing to protect the affordability of publicly subsidized, owner-occupied housing, will enforce use and resale controls contained in either a ground lease or a deed covenant.

33. Another intellectual influence, especially for Borsodi, was Henry George. Much of Borsodi's life was spent translating George's philosophy into applied economics, especially George's assertion that all wealth comes ultimately from land and that poverty and many other social ills come from patterns of land ownership and property taxation that encourage land speculation. Other cultural, religious, and intellectual roots of the CLT are discussed by Lindsay (2001) and Swann (2001).

34. The story of New Communities is told in International Independence Institute (1972), Institute for Community Economics (1982), and Swann (2001).

35. Four years prior to the creation of the Community Land Cooperative of Cincinnati, an attempt had made to establish a CLT in the Columbia Heights neighborhood of Washington, DC. Spearheaded by community activists from the Center for Creative Nonviolence, this urban CLT dissolved soon after its incorporation. The stories of these first urban experiments with the CLT model are told in Institute for Community Economics (1982) and Davis (1991).

36. Swann left ICE in 1979. Under the leadership of ICE's new director, Chuck Matthei, ICE's assistance to CLTs took on more of an urban character. The model was increasingly used for affordable housing and neighborhood revitalization.

37. Institute for Community Economics, *Annual Survey of Community Land Trust Activity in the United States*, 2000.

38. Housing and Community Development Act of 1992, Section 212, "Housing Education and Organizational Support for Community Land Trusts." HUD published two documents, announcing and interpreting this statutory language for its field offices: *CPD Notice 21B*, issued soon after the 1992 amendments were adopted, and *Homeownership Options Under the HOME*

*Program: A Model for Publicly Held Properties and Land Trusts* (HUD, 1999).

39. Fannie Mae's "Guidelines on the Valuation of a Property Subject to a Leasehold Interest and/or Community Land Trust" were issued on June 13, 2001. They were incorporated into the official guide through which Fannie Mae provides instructions to its approved lenders. Additional guidelines for underwriting CLT homes were published by FNMA in March 2006.

40. These counts are based on an analysis of CLT formation and CLT failures conducted by the author and his partners in Burlington Associates in Community Development LLC with the assistance of Kirby White at Equity Trust and Jeff Yegian and Julie Orvis at the Institute for Community Economics. Between 1970 and May 2006, a total of 194 nonprofit organizations in the United States incorporated into their structure and operations most or all of the key features of the "classic" CLT; 162 of these nonprofits had succeeded in acquiring residential real estate. Among these "propertied" CLTs, 53% (86 CLTs) were still actively expanding their holdings as of May 2006; 23.5% (38 CLTs) were still actively managing the use and resale of their property, but were not presently expanding their holdings; 15.5% (25 CLTs) were still in operation and still in possession of residential real estate, but no longer possessed the organizational capacity to actively manage their holdings; and 8% (13 CLTs) had divested themselves of their property and eventually dissolved (Burlington Associates in Community Development, 2006).

41. There has been some interest in the model in New Zealand and Africa, as well. The first CLT experiment in Kenya is examined by Jaffer (2000).

42. Information about the CLT development efforts of the Cooperative Housing Federation of British Colombia is taken from Conaty et al. (2003:21) and Merkley (1996). Another Canadian initiative is described by Nozick (1996), focused on efforts to establish a CLT in the Milton Park neighborhood of Montreal. See also, Roseland (1992.)

43. Two examples of projects supported by the CLU are described by Conaty et. al. (2003:17). The Isle of Gigha Trust was able to purchase 3,200 acres for £4 million. Twelve percent (12%) of the funding came from the CLU, 83% came from the Scottish Land Fund, and 5% was raised by the local community. Following the buyout, 41 houses were improved, 14 new houses were built, and a community building and three small business units were constructed. More recently, the CLU provided technical assistance and funding in support of a community purchase of 93,000 acres on South Uist.

44. Although CLT activists in the UK have drawn inspiration and information from modern-day CLTs in the United States, community stewardship of the land is neither a recent nor novel idea in the UK. Most land in England and Wales was classified as common land until the enclosures of the 18th and 19th Century. Community land ownership was central to the original vision of the Chartists, a proposal included in the Chartist Land Plan of 1846. In a similar vein, John Ruskin proposed a National Trust to steward lands for the benefit of the community and Robert Owen advocated Villages of Co-operation and Unity for the poor and unemployed. CLTs are also similar in concept to the cooperative ownership of land proposed by Ebenezer Howard for his Garden Cities and the model village trusts supported by philanthropists like George Cadbury and Joseph Rowntree. The earliest example of an entity resembling a modern-day CLT, the Colton Parish Lands Trust in Staffordshire, was created through an Act of Parliament in 1792. It is still in existence today. These CLT precursors are described in Conaty et al. (2003) and Crowe (2004).

45. The standard method of mortgage financing in an LEC is for the cooperative to obtain a blanket mortgage, secured by the property owned by the cooperative housing corporation. Nearly all of the mortgage debt is collectively held by the LEC. In rare cases, however, an LEC is financed in a manner more typical of a market-rate cooperative, where share loans incurred by individual members cover most (or all) of the cost of acquiring the real estate. The Beecher Cooperative, profiled in this chapter, is financed mostly through share loans.

46. Occupancy under the terms of this lease is far more secure than is typically the case under the standard landlord-tenant agreement. For example, occupants may be evicted only for cause and the right to occupy, in most cooperatives, may be bequeathed to one's heirs.

47. The cooperative corporation is enabled but not obligated to exercise this preemptive option. If the co-op chooses not to repurchase their shares, homeowners are forced to find buyers on their own. They may still not resell their ownership interest for more than the maximum transfer value determined by the formula contained in their subscription agreement, their shares, and the co-op's bylaws.

48. In some markets, the reverse may be true; that is, the market value may be lower than the maximum transfer value (MTV) determined by the cooperative's resale formula. When this happens, the cooperative does not repurchase shares at the formula-determined price but, instead, allows the co-op's homeowners to resell their shares for whatever price the market will bear (as long as the MTV is not exceeded). See, for example, the profile of Chicago's Hermitage Manor Cooperative, herein.

49. The LEC–CLT hybrid is the model being used by the Cooperative Housing Federation of British Colombia and the model being proposed for the redevelopment of the Oldham Pathfinder area of London. See Conaty et al. (2003) and Crowe (2004). In the United States, limited equity cooperatives have been developed on lands leased from a local CLT in Berkeley, CA, and Burlington, VT. A CLT is also being explored as a means of preserving the affordability of a number of at-risk LECs in Ann Arbor, MI.

50. Cooperatively owned farmworker housing is examined by Bandy and Weiner (2002). Descriptions of mobile home cooperatives can be found at Willcox (1989) and in the profile of New Hampshire's mobile home cooperatives, herein.

51. See Goodman and Goodman (1997).

52. Prior to 1949, the Lanham Act provided the Federal Works Agency with funding to build massive amounts of housing in congested defense centers. Approximately 625,000 units of Lanham Act housing were constructed between 1940 and 1944. Some of this housing was cooperatively owned. Although most of this housing was dismantled after the war, some of it was more durably constructed and still survives.

53. Section 213 was later amended to cover the conversion of existing buildings into cooperatives, not only the construction of new cooperatives.

54. Chicago Mutual Housing Network (2004:12); Calhoun and Walker (1994).

55. Cooperatives providing housing exclusively for the elderly received assistance through another federal program during this same period, Section 202. Enacted in 1959, Section 202 has been used primarily for rental housing, but some cooperatives have been assisted as well. Cooperatives have also been created under the federal Low Income Housing Preservation and Resident Homeownership Act. LIHPRHA was enacted in 1990 in response to the large number of Section 221(d)(3) and 236 rental properties that were leaving the affordable housing inventory when owners either prepaid their BMIR mortgages or when program contracts expired. LIHPRHA provides loans and grants to cover the costs of acquiring and rehabilitating these expiring use projects, as well as technical assistance for tenants and nonprofits who are working to preserve these projects as affordable housing. Co-op conversion has been one of the strategies. LIHPRHA has resulted in the creation of 18,000 cooperative units nationally (CMHN, 2004: 14).

56. Although Section 221(d)(3) was successfully used to create limited equity housing cooperatives, it was more extensively used for the creation of rental housing.

57. Although the formal name of this legislation was the Limited Profit Corporations Law, it has become widely known as Mitchell-Lama, after its legislative sponsors.

58. Sazama (2000); Silver (1998).

59. For more on TIL, see Leavitt and Saegert (1990); White and Saegert (1997); and Schill (1999).

60. These two pieces of DC legislation are the Rental Housing Act of 1977 and the Rental Housing Conversion and Sale Act of 1980.

61. Four of the 81 LECs created between 1977 and 2004 had been lost to foreclosure; another 20 LECs were lost to the market, sold to private owners. See Coalition for Nonprofit Housing & Economic Development (CNHED), 2004.

62. Several reviewers of the present chapter have suggested that this figure, compiled several years ago, may underestimate the total number of LEC units in the United States They point, in particular, to the omission from this list of LECs developed with HOME funds, LECs developed with private financing, and LECs developed in mobile home parks.

63. There were two exceptions. Building cooperatives in the Atlantic provinces, in Quebec, and in Ontario constructed 20,000 dwellings during the 1930s and 1940s. Student housing cooperatives were formed at Guelph, Toronto, Queen's, Waterloo, and a number of other university campuses during the 1960s. Details of the Canadian cooperatives, summarized in this section are drawn from Selby and Wilson (1988), Skelton (2002), and Cooper and Rodman (1992).

64. As Skelton (2002) has pointed out, Conservatives supported cooperatives in the period after WWII because cooperatives emulated homeownership and posed an alternative (and a threat) to public housing. Labour supported cooperatives as an anti-capitalist institution. New Labour supported cooperatives for their potential to diversify housing provision. Yet cooperatives have never been made a central plank of the housing policy of any major British party.

65. Information on the cooperative sector in Britain is drawn from: Birchall (1988); Clapham and Kintrea (1992; 1987); Conaty et al. (2003: 17–21); and Skelton (2002).

66. Information on co-op development in Britain since 1974 is drawn from Skelton (2002) and from personal communication with David Roger, director of CDS Co-operatives, the largest cooperative housing services agency in south England.

67. For one example of a transition from tenant management to cooperative ownership, see WATMOS Community Homes (http://www.watmos.org.uk/). WATMOS is an ownership cooperative formed by eight former TMOs. It took over the ownership of 1840 homes which the TMOs had managed for a local housing authority.

68. The Swedish term for this tenure is "bostadsraat," usually translated as "tenant ownership." Descriptions of cooperative housing in Sweden can be found in Andrusz (1999); Clapham and Kintrea (1987); Clapham, Kintrea, Millar, and Munro (1985); Skelton (2002); Gilderbloom and Appelbaum (1988: 163–180); Headey (1978); and Turner (1997).

69. Adding to the organizational complexity of the "Swedish model," some of these regional, secondary cooperatives are joined together in national, tertiary cooperatives.

70. Conaty et al. (2003: 24) have described a similar process of commodification in Norway: "In the early post-war period, there were strict controls on the exchange of second-hand co-op dwellings, with deposits for new entrants set at an initial price plus some allowance for inflation. . . . In 1981, following the election of a Conservative Government, price ceilings were adjusted upwards substantially, and then entirely abolished everywhere except Oslo and 11 other areas."

71. Municipalities were given primary responsibility for solving Sweden's housing problems in 1947, along with the right to decide how all land within their boundaries could be used. They were also given rights of expropriation and first refusal on land. By 1980, there were some 250 municipal housing corporations scattered throughout the country using lands acquired and banked by their municipality to develop low-cost rental housing. See Gilderbloom and Appelbaum (1988: 168–169).

## Chapter Three: Design

72. These design decisions are seldom the purview of a single party. Those who initiate shared equity housing, as well as those who develop, regulate, fund, finance, or buy it, may all have a say in designing its use and resale controls. In the present chapter, we shall tend to use "sponsor" as a catch-all term for describing these interested parties.

73. It is beyond the scope of the present study to describe either the frequency or the effectiveness of the multiple options described under each programmatic component. On occasion, I will call attention to an obvious strength or weakness of a particular option, but no systematic attempt is made to evaluate or to compare them. The performance of different design elements, like the performance of the models themselves, has had the benefit of too little research. Phase Two of NHI's shared equity homeownership project will address many of these longstanding research gaps.

74. The bylaws of most CLTs provide for another charitable or governmental organization to inherit the CLT's responsibilities as lessor of the land and enforcer of the lease's use and resale controls in the event of the CLT's dissolution.

75. The duration for inclusionary rental units was increased again in 1989 to require a 20-year affordability period, but the affordability period for inclusionary owner-occupied units remained at ten years.

76. The only reason that 1,441 (38%) of these remaining units retained their affordability was that they had been purchased by the county's public housing authority.

77. California provides another illustration of this range. Among the 107 jurisdictions with an inclusionary housing program, "virtually all jurisdictions report that they have formal mechanisms to maintain affordability over time. Restrictions range from periods of ten years to in perpetuity, with the mean term for rental housing being 42 years and for homeownership housing being 34 years. Permanent affordability is reported in at least 20% of programs for both rental and for-sale" (CCRH/NPH, 2004: iv).

78. Many of these "realities" are discussed in the next chapter. Here, it is sufficient to say that, amidst the political horse-trading and administrative wrangling that accompany the enactment of governmental programs mandating or subsidizing shared equity housing, the duration of affordability controls tends to be one of the most hotly debated issues.

79. Note, however, that the buying power of this recaptured subsidy may be considerably less than its buying power when it was originally invested. In a market where the affordability gap between housing costs and household incomes is widening, recaptured subsidies buy less and less on the open market. See the discussion of Subsidy Retention in Chapter Four.

80. In the early days of the CLT movement, before leasehold mortgages for CLT homes became common, nearly every CLT was forced to subordinate its interest in the land. When a rare foreclosure occurred, the CLT did not retain ownership of the underlying land. Although CLTs in some parts of the United States still pledge their land today, most CLT homes are using a leasehold mortgage which protects the CLT's land, preserves the ground lease, and retains some of the use controls in the event of foreclosure.

81. A related issue is who will be assigned responsibility for making these determinations. This issue is taken up at a later point in the present chapter under "Enforcement."

82. Many factors can affect the decision of how high or low to set such income eligibility, including the earnings profile of the population for whom such housing is being developed, the development cost of the housing, and the availability of favorable financing to construct or mortgage this housing. For a nonprofit sponsor, the eligibility decision may also be guided by the organization's wish to obtain or retain a 501(c)(3) tax exemption. The higher the income of the population being served, the less likely are the organization's activities to be deemed "charitable" under the Internal Revenue Code. It should be noted, however, that in recent years the IRS has been defining the charitable threshold not in terms of a single percentage of AMI but in terms of the total mix of low-income and moderate-income groups served by an organization.

83. A related issue might be "how much should eligibility be relaxed?" It is usually the case, when a program permits the relaxation of eligibility requirements, that these requirements are removed in their entirety after a specified period of time. Some programs allow eligibility to be modified in stages. For example, if a buyer earning less than 80% of AMI cannot be found within 60 days, the seller is allowed to sell to a household earning less than 100% ofAMI. If another 60 days pass without an eligible buyer, the seller is then allowed to sell to a household earning less than 120% of AMI.

84. Few public funders of shared equity housing require assisted homeowners to remain "eligible" after purchasing a resale-restricted home. Even in the federal government's HOME program, neither the owner of a HOME-assisted unit nor his/her heir is required to continue to meet HOME's income-eligibility requirements after purchase. Resale restrictions continue to apply to the property, however, for the full term of the HOME-mandated affordability period.

85. In a variation of Option #2, some sponsors of resale-restricted housing specify types of absences where the length of the homeowner's absence will not violate the occupancy requirement; for example, an absence caused by a illness in the family or the mobilization of parents in the national guard.

86. There is implied consent when ownership and occupancy are accepted by heirs without challenge. Many sponsors of shared equity housing wisely insist, however, on going through the same disclosure and orientation process with new heirs that they employ in selling a shared equity home to a new buyer.

87. Most CLTs, for example, allow automatic occupancy for three categories of heirs: the homeowner's spouse, children, or any member of the household who has resided on the premises for at least one year immediately prior to the homeowner's death. These heirs are not required to be income-qualified. Any other heirs, legatees or devisees, however, must meet the CLT's income test to be allowed to occupy the premises. Heirs who are not income-qualified must surrender the leasehold and sell the improvements to the CLT (at the price determined by the CLT's resale formula).

88. A related issue, in setting and enforcing any maintenance standard, is the right to inspect. Can an outside party periodically enter the premises in order to assess the homeowner's performance in maintaining his or her home? If so, what limits should be placed on inspections in order to protect the homeowner's right to privacy? These questions are addressed later, under "Enforcement."

89. Sponsors who choose this option tend to rely not only on public officials but also on private lenders to monitor and enforce compliance with local codes.

90. This is the approach taken, for example, by Boulder, CO's inclusionary housing program. The covenant used by the City to preserve the affordability of its inclusionary units reads in part: "Shortly before the sale price limit is determined, the City shall have the right to inspect the Property to determine whether the Owner has complied fully with the maintenance obligations set forth in Paragraph 9 hereof . . . If, after such an inspection, the City determines in its judgment that the Owner has not fully complied with this obligation, the City shall determine in its judgment the cost to complete such repairs, replacements, and other work necessary to restore the Property to a good, safe and habitable condition in all respects and to bring it into full compliance with all applicable laws ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Property. This amount shall be called the Excessive Damage Assessment, and it shall be included in the calculation of the resale price limit."

91. Any control over capital improvements initiated by an owner after acquiring a shared equity home will depend on this distinction between a repair and an improvement, as described in the covenant, ground lease, proprietary lease, or other document restricting the property's use and resale. Although simple in theory, this distinction can become quite complicated in practice, especially when an alteration can be considered both a repair and an improvement (e.g., when a rickety window is replaced with an energy-efficient thermal window or when a ten-year-old asphalt shingle roof in need of repair is replaced with a fitted metal roof that will last for 50 years).

92. A more detailed description of the difficulties involved in valuing later capital improvements can be found in Chapter Eight of the *CLT Legal Manual* (Institute for Community Economics, 2002: 8–8).

93. This is possible only in those resale formulas, however, where there is a separate calculation and a separate credit for post-purchase capital improvements initiated – and paid for – by the homeowner.

94. This variation can be found, for example, in the affordability covenant used by the City of Boulder, CO. On an annual basis, the city manager publishes a list of "eligible capital improvements" which the owner of a deed-restricted home may make to his or her property and for which that owner will receive a credit at the time of resale. Homeowners are not prohibited from making other types of improvements, but only those that appear on the city manager's list of "Eligible Capital Improvements" can be counted toward the homeowner's equity. This variation, in effect, straddles the line between Option #1 and Option #2.

95. When the cost of purchasing shares in an LEC is high, prospective members may find it necessary to take out individual share loans. These are personal loans, however, unsecured by the cooperative's property. A rare example of an LEC financed mostly through individual loans, rather than a blanket mortgage, is the Beecher Cooperative, profiled in the previous chapter.

96. The form of tenure can also be a barrier for lenders who have never been involved in the mortgaging of homes encumbered with an affordability covenant, the mortgaging of CLT homes on leased land, or the financing of share loans for the occupants of a limited equity cooperative. Institutions with more experience lending on these models, however, have tailored existing financial products – or developed new ones – to fit forms of tenure that deviate in significant ways from the market-rate houses and condos that make up the bulk of their business for mortgages and home improvement loans.

97. If the sponsor is a CLT, foreclosure can also result in the loss of the CLT's land, if the CLT has subordinated its interest in the underlying land to the homeowner's mortgage. Although fairly

typical 20 years ago, this practice of subordinating the fee to the mortgage has become far less common today as residential leasehold mortgages have gained wider acceptance among private lenders.

98. In the ground lease used by most CLTs, for example, the CLT may reject any proposed mortgage that is not a "standard permitted mortgage," as defined in the lease. Conversely, the CLT must consent to a proposed mortgage that meets the lease's definition of a "standard permitted mortgage." Included among the components of this definition are a requirement that the mortgagee be an "institutional lender," that the mortgage be a "first lien" on the home, that the CLT have 120 days to cure any mortgage default, that the CLT have 30 days after the cure period to pay off the indebtedness secured by the mortgage, and that the CLT have a first right after foreclosure to purchase the home from the mortgagee. (Institute for Community Economics, 2002: 12-23–12-25).

99. If the sponsor discovers that the mortgage or lien does not meet the conditions or fails to contain the features required in the covenant, ground lease, or proprietary lease, the sponsor can simply refuse to subordinate the use and resale restrictions. In a foreclosure, the lender would then be required to resell the home to an income-qualified household at the resale-restricted price, a constraint to which few lenders are willing to consent.

100. A sponsor of shared equity housing may condition its approval of a homeowner's mortgage on the presence of such a notification provision, withholding consent when a mortgage does not obligate the lender to notify the sponsor if the homeowner is in arrears or in default.

101. Although leasehold mortgages have become the standard method of financing CLT homes in most parts of the country, there are still places where CLTs are forced to subordinate their interest in the underlying land to a homeowner's mortgage in order to obtain financing. Under this arrangement, the CLT does not retain ownership of land in the event of foreclosure.

102. This analysis of resale formulas draws heavily on "Designing a Resale Formula," Chapter Eight in the *Community Land Trust Legal Manual* (Institute for Community Economics, 2002). Other excellent discussions of the trade-offs involved in designing resale formulas can be found in Kirkpatrick (1981), Fisher (1993), and Sazama and Willcox (1995). The performance of different formulas can compared in an interactive spreadsheet posted at www.burligtonassociates.com

103. The normal assumption is that the buildup of equity from mortgage amortization will be determined by the actual amount of a homeowner's monthly mortgage payments that is being credited to principal. However, in cases where the interest rate has been heavily subsidized in order to increase affordability for an initial owner, some shared equity housing programs choose not to credit the full amount of the amortized debt to the owner's equity. They establish, instead, a standardized interest rate that is closer to the present market rate. This standardized rate is then used to calculate the amount of interest the homeowner would have paid without the subsidy.

104. The resale price stipulated by many formulas is either the price determined by the resale formula or the appraised value of the home at the time of resale, whichever is lower.

105. The assumption, in most cases, is that whatever index is chosen will always change in a positive direction – i.e. adjustments in the original purchase price will always move upwards. Depending on the index, however, the percentage of change between the time of purchase and the time of resale of a shared equity home may be negative, resulting in a formula-determined resale price that is lower than the original purchase price. Some indexed formulas allow for this possibility. Many do not. They are either silent on the subject, trusting that the chosen index will never move downwards, or they do not allow a negative change in the chosen index to drive the resale price below the original purchase price. In effect, the index establishes a ceiling, while the original purchase price establishes a floor.

106. See the profile of ARCH in the previous chapter.

107. Some of these distinctions and decisions were discussed earlier, under "Improvements."

108. In a CLT, these appraisals are usually applied not to the combined value of land and buildings, but to the value of the buildings alone.

109. The basic form of a shared appreciation formula is the following: Purchase price + [(Appraisal2 – Appraisal1) x %] = Resale price.

110. For the purpose of determining how much appreciation has occurred, these formulas establish a base value that is not the purchase price of the home but its appraised value at the time of purchase. In some cases the purchase price may equal the appraised value, but often the price is substantially below the home's appraised market value.

111. The same result is achieved by multiplying this percentage by the property's appraised value at the time of resale. This is the form that many appraisal-based formulas take, including the formula used until recently by the State of Massachusetts for deed-restricted housing administered by "Homes for Good." (See the profile of this program in the previous chapter.)

112. The Burlington Community Land Trust (Burlington, VT) adds another operation to this appraisal-based formula. The BCLT's resale formula gives the departing homeowner 25% of the appreciation for that portion of a residential property she originally bought and actually owns. The BCLT defines this ownership interest as that portion of the property's total value – land and house – which the homeowner originally purchased from the BCLT, represented as a ratio: Purchase Price/$\text{Appraisal}_1$. When the homeowner resells his/her ownership interest, s/he receives

25% of the appreciation that is attributable to his/her ownership interest, plus the price s/he paid in initially purchasing the home.

113. Even when the seller of a shared equity home is required to find a buyer, a third party may still be involved in certifying the eligibility of the prospective buyer before the home is actually transferred.

114. Some attorneys suggest that interjecting a third party into the chain of title at every resale may have the added advantage of strengthening the third party's right to enforce and defend the use and resale restrictions encumbering the property. Property transfer taxes can present an expensive obstacle to such third-party sales, however, in states like Pennsylvania where a third party is forced to pay twice on the same resale: once when it repurchases the property from the departing homeowner and once when it resells to a subsequent low-income homebuyer.

115. An acknowledgement of the covenant's restrictions may also be contained in the condominium declaration for the entire project.

116. These same restrictions often appear in a promissory note, accompanying the mortgage. In some cases, a promissory note is used *instead* of a mortgage instrument to secure a public or private subsidy.

117. These use and resale restrictions are not binding on subsequent owners unless they assume the first homeowner's mortgage at the time they purchase the shared equity home. Alternatively, a new mortgage, containing the same restrictions and starting a new control period, may be executed with the new homeowner.

118. Depending on a state's foreclosure laws, the process of enforcing use and resale restrictions through foreclosure can be extremely slow – with an outcome that is hardly certain.

119. Although ground leasing as the preferred mechanism for controlling the use and resale of shared equity housing is to be found most predictably among community land trusts, this mechanism is not exclusive to the CLT. It has also been used by state and municipal agencies, public housing authorities, and nonprofit organizations that are not CLTs to restrict the use and to preserve the affordability of housing developed on leased land.

120. While the proprietary lease imposes the most significant restrictions over the occupancy, maintenance, and improvement of a co-op unit, additional restrictions on the unit's use may be contained in a cooperative's "house rules," covering such things as noise, pets, guests, parking, etc.

121. Notification is a prerequisite here. A hands-off sponsor who never learns of these events will do nothing to see that the violations that triggered them are corrected. Any sponsor who chooses this option for monitoring compliance with use and resale controls must ensure, therefore, that a system is in place for notifying the sponsor when a homeowner is violating municipal codes, defaulting on a mortgage, not paying utility bills, or charging too high a resale price.

122. Some grantee agreements, executed between CLTs and a public agency, have given the latter the right to take over the CLT's rights and responsibilities as the lessor of land underlying a publicly-assisted home, if the CLT is no longer monitoring and enforcing the occupancy, eligibility, and affordability provisions in the ground lease.

123. When a formula tilts toward a high return for the seller, the sponsor may be able to subtract an administrative charge without compromising the home's "profitability" for the household who is selling the home. When a formula tilts toward a low return for the seller, creating a significant spread between the resale price paid by the sponsor in repurchasing the home and the maximum price that a low-income homebuyer can afford, the sponsor may be able to add an administrative charge without compromising the home's affordability for the next household who is buying the home.

## Chapter Four: Policy

124. To focus on the policies, programs, and plans of state and local government is not to suggest that the federal government has no role to play in supporting (or impeding) the expansion of shared equity homeownership. Federal programs in the past, as noted in Chapter Two, were crucial to the growth of LECs during the 1950s, 1960s, and 1970s and for the growth of CLTs during the 1990s. It might be argued, moreover, that deed-restricted housing also got a boost from the federal government during the 1990s because jurisdictions receiving HOME funds were required to maintain the affordability of HOME-assisted, owner-occupied units for a period of at least 15 years. For many jurisdictions, this was their first exposure to a policy of durable affordability, even if most were not inclined to extend their controls beyond the 15-year federal minimum. The federal government has been a factor in expanding shared equity homeownership in the past. It could and should play a larger role in the future. Neverthless, there are three reasons for focusing the present policy discussion on governments below the federal level. One, funding and responsibility for addressing the nation's housing problems are increasingly "devolving" from the federal government to cities and states (Davis, 2006). Even when funds are federal in origin, cities and states are being given enormous discretion in deciding how these funds are to be spent. Two, the greatest support for shared equity homeownership – or, conversely, the greatest impediment to its growth – is presently found in the policies and priorities of public officials below the federal level. Third, the taxation of resale-restricted, owner-occupied housing is looming as a major problem for deed-restricted homes, CLTs, and LECs. This is an issue that can only be addressed at the state and local level.

125. The "forever housing policy" of Connecticut during the 1970s, the policy of "perpetual affordability" of Burlington, VT

(in place since 1984), and the requirement for the permanent affordability of inclusionary units of Boulder, CO, are three examples.

126. Public intervention will engender few affordable units if: (1) the subsidies made available by a local jurisdiction are insufficient to bring high-cost housing within the reach of low-income households; (2) the regulatory incentives being offered are insufficient to coax developers into voluntarily producing affordable housing; or (3) the affordable set-asides being required by inclusionary zoning are ineffective because no market-rate housing is being built.

127. Decontrol may be handled in other ways, however. See the previous chapter for a more detailed discussion of the issues and options involved in designing a decontrol policy for publicly assisted homeownership with expiring resale restrictions.

128. Conspicuously missing from this list is the reason cited most frequently by state and city officials when rejecting a policy of durable affordability: "The Feds won't let us." This is a convenient – but usually invalid – excuse for refusing to do what a local official does not want to do anyway. Most federal programs that provide funding for the production of affordable housing – including, for example, HOME, CDBG, and the Low Income Housing Tax Credit program – give considerable discretion to state and local governments in establishing priorities and requirements for the use of these funds. Should a jurisdiction decide to make long-term affordability a priority in its Consolidated Plan and to require long-term affordability for projects receiving federally supplied discretionary funds, nobody at HUD is going to declare that jurisdiction in violation of federal rules.

129. See, for example, the case studies of the Hermitage Manor Cooperative and the Time of Jubilee CLT in the previous chapter.

130. These arguments are discussed in considerable detail in the next chapter, so little more shall be said about them here.

131. Libby and Bradley (2000), in their excellent profile of the Vermont Housing and Conservation Board, refer to this administrative burden as the "problem of perpetuity." As they point out, "another difficulty with perpetual conservation easements and affordability covenants is a practical one: the trusts must care for and enforce the community's interest for a very long time."

132. Two other legal doctrines emerged out of the same sentiments but speak less to the longevity of the restrictions. These are known respectively as "privity" and "touch and concern." The doctrine of privity requires there to be, at the time a covenant is established, a legal relationship between the party imposing the restrictions and the party being bound by those restrictions. Privity exists, for example, between the seller and buyer of a parcel of land when the current owner appends an affordability covenant to the deed conveyed to another owner. The doctrine of touch and concern requires a continuing connection between the property burdened by restrictions and another property that is benefited by these restrictions. (CHAPA, 1990: 75).

133. Although established by U.S. courts as part of the common law, these doctrines have a constitutional or statutory foundation in several states. For example, the Texas constitution establishes a public interest in the unfettered commerce and development of private property. In Massachusetts, the prohibition is statutory. Massachusetts General Law c.184 subsection 26 declares that any restriction on real property cannot extend more than 30 years from the date of its creation, unless extended for another 30-year term by a written extension filed in the Registry of Deeds (CHAPA, 1989: 2).

134. Debbie Bell authored the chapter entitled "Enforceability of the CLT's Preemptive Right" in the *CLT Legal Manual* (Institute for Community Economics, 2002). The passage cited above appears on page 14-4. Other discussions of the application of these rules to resale-restricted housing can be found in Abromowitz (2000, 1992, 1991), CHAPA (1992, 1990) and Seeger (1980).

135. Both quotes appear in a widely distributed brochure published by Connecticut's Department of Housing, circa 1987, describing the state's "Forever Housing Programs." See also: Kunz (1991).

136. Vermont's statute authorizing "housing subsidy covenants" (27 V.S.A 610) was enacted in 1989. Maine's statute authorizing "affordable housing covenants" (33-A M.R.S.A 121) and Massachusetts' statute authorizing "affordable housing restrictions" (Chapter 184, Section 26) were both enacted in 1991.

137. These cooperative housing statutes – found at M.G.L. 157B (Massachusetts), 14 V.S.A. 1598 (Vermont), Section 2002.273.11, Subdivision 8 of the Minnesota Statutes, and Section 33007.5 of the California Health and Safety Code – make special provision for limited-equity cooperatives, sanctioning the use of perpetual restrictions on the transfer of member shares in order to preserve the affordability of housing for low- and moderate-income households.

138. The state's Redevelopment Law begins at Section 33000 of the California Health and Safety Code. Affordability standards for RDA-assisted ownership and rental housing are found in Sections 50052.5 and 50053, respectively. These codes, plus Section 6920 of Title 25 of the California Code of Regulations, set the maximum housing prices for units that must remain affordable to very low-, low-, and moderate-income households.

139. A more detailed description of the options for disclosure that are commonly employed in shared equity housing can be found in the previous chapter.

140. See "Enforceability of the CLT's Preemptive Right" in the *CLT Legal Manual* (Institute for Community Economics, 2002). The quoted passage appears on page 14–16.

141. The single largest homeowner subsidy is the mortgage interest deduction. Because this public subsidy not only goes exclusively to homeowners, but also goes predominantly to homeowners earning the highest incomes and living in the most expensive homes, it has been dubbed by its critics the "mansion subsidy" (Dreier, 2006). In 2004, 73.7% of the $70 billion in mortgage interest deductions were claimed by households earning over $75,000 per year. By contrast, the entire HUD budget in 2004, most of which went toward meeting the housing needs of low-income households, was $32 billion (Dreier, 2005).

142. Subsidies that are not provided in the form of a grant are often structured as a deferred loan to the sponsoring organization. Such loans, under a policy of subsidy retention, are typically forgiven at the end of a specified regulatory period, locking the subsidy into the sponsor's permanent holdings. If an assisted home is resold during the regulatory period, the sponsor does not need to repay the loan, as long as the assisted home is resold to another income-eligible household.

143. It is worth emphasizing that these are policies guiding public funding for homeownership. Many jurisdictions that endorse subsidy removal when investing in homeowner housing are quick to insist on subsidy retention or subsidy recapture when the public's investment is going into rental housing.

144. This is sometimes the same home that was recently resold. Either a new loan agreement is executed with the new homeowner or the new homeowner assumes the existing loan that is already in place.

145. The fatal flaw in subsidy recapture programs is graphically illustrated in a flash animation entitled "Understanding Subsidy Retention," posted at www.burlingtonassociates.com. Also see the analysis of subsidy retention that was done by Sacon (1996) for the City of Portland (OR).

146. Alternatively, in a strong market a municipality may charge a substantial rate of interest on the funds loaned to the first homeowner, but defer all interest payments until the home is resold. Recapture of the original subsidy, plus interest, will still be insufficient to close the affordability gap for the next low-income homebuyer in most rising markets, but the amount of additional capital needed from the municipality to close this gap will be less. To put it another way, the buying power of the recaptured funds will still be eroded over time, but not as fast as in subsidy programs where only a nominal rate of interest is charged, or none at all.

147. Figure 4.2 is taken from Jacobus and Cohen, forthcoming. Used by permission of the authors.

148. Actually, while the homeowner is the beneficiary of the subsidy, under a retention policy the subsidy is usually given to the nonprofit organization or the cooperative housing corporation that is developing the housing, not to the individual homeowner.

149. To reduce the competitive disadvantage for shared equity homeownership, some jurisdictions that operate parallel programs provide a much deeper subsidy for resale-restricted housing, resulting in a much lower purchase price. For example, under a municipality's recapture program, a low-income homebuyer might be offered a $20,000 deferred-interest loan to help in purchasing a market-rate home selling for $150,000. Under the municipality's subsidy retention program, the same homebuyer, wishing to purchase a shared equity home of the same value, might be enabled to purchase that home for $90,000, because of a $60,000 grant provided to the home's nonprofit developer. The difference between these parallel subsidy programs would be substantial enough to mitigate the risk of one program undermining the other.

150. Even when a nonprofit sponsor of shared equity housing is exempt from state and federal income taxes and even when the housing developed by that sponsor is sold for a very affordable price to very low-income households, it is rare for the housing to be entirely exempt from local property taxes.

151. Any tax bills received by the CLT for lands conveyed through what is, in effect, a perpetual lease are passed along to its lessees for payment.

152. Different resale formulas will of course yield a different maximum price. In the hypothetical case presented here, a resale formula that grants the seller 25% of the appreciation for that portion of the property's total development cost initially purchased by the homeowner would allow the seller to earn almost $9,000 in appreciation after five years of occupancy. This would result in a resale price of $94,000.

153. The Lincoln Institute of Land Policy has recently taken up the challenge of researching the many ways in which resale-restricted homes on lands leased from a CLT are being taxed around the country. This study, scheduled for completion at the end of 2006, will include best-practice recommendations for the valuation and taxation of CLT homes.

154. Oregon provides another example of a state court weighing in on the question of valuing and taxing resale-restricted housing, although in the case of *Bayridge Assoc. Ltd. Partnership v. Department of Revenue*, 321 Oregon Reports 21 (1995), the focus was on resale-restricted rental housing rather than resale-restricted homeownership.

155. Vermont is a good example of a state where the legislature finally stepped in to settle the question. The Vermont Law on Property Tax Appraisals of Covenant-Restricted Homes (32 V.S.A. § 3481(1)) was enacted in 2005 and became effective on April 1, 2006. It reads, in part: "The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value. Those elements shall

include a consideration of a decrease in value in nonrental residential property due to a housing subsidy covenant as defined in section 610 of Title 27, or the effect of any state or local law or regulation affecting the use of land . . ."

156. California is one example. Since 1981, the State Board of Equalization has issued a series of letters to county assessors instructing them to enter resale-restricted homes onto local tax roles at their actual sales price and to use other resale-restricted property as comparables in adjusting the valuation and taxation of resale-restricted homes over time.

157. The issue here is that affordability controls must last long enough to ensure that the removal of these controls is not imminent. A homeowner who is the beneficiary of a lower tax assessment, paying lower taxes because the resale of his/her property is restricted, should not be able to benefit from an equity windfall when these same restrictions are lifted. An innovative (but untried) approach to taxing resale-restricted housing, when decontrol is near, was noted by Alan Mallach in his written critique of an earlier version of the present chapter. He wrote: "Some assessment people I've talked to have suggested, at least in principle, that the valuation should be adjusted upward toward the market level as the end of the control period approaches."

158. In Boulder, CO, the county assessor has agreed to accept resale-restricted valuations provided by the municipal and nonprofit sponsors of resale-restricted housing. City officials who are charged with monitoring and enforcing the affordability restrictions on 470 deed-restricted homes created through inclusionary zoning calculate the maximum resale price of every inclusionary unit in their inventory, applying the indexed resale formula contained in each home's affordability covenant. These formula-determined resale prices are reported to the county assessor every year for taxation purposes and biennial reassessments. Thistle Community Housing, a Boulder nonprofit developer that has used a ground lease with a shared appreciation formula to create permanently affordable homeownership, does the same. A similar procedure for valuing and taxing the resale-restricted, owner-occupied housing placed under the stewardship of the recently incorporated Chicago CLT is being contemplated by the assessor for Cook County.

159. In Burlington, VT, for instance, the local assessor has decided that the resale restriction which is placed on all houses and condominiums developed by the Burlington Community Land Trust reduces the value of these resale-restricted homes by exactly 20%. In Madison, WI, by contrast, the local assessor has decided that resale-restricted homes rise in value at a rate that is 33% lower than the rate of increase in market-rate homes.

160. This may not be true for CLTs working in severely disinvested neighborhoods, where the fair rental value of land is very low – or non-existent. In these cases, the lease fee charged by a CLT may actually exceed the fair market value of its land.

## Chapter Five: Performance

161. This passage appears in the introductory chapter of *The Community Land Trust Handbook* (Institute for Community Economics, 1984: 8). DeFilippis (2004: 57) makes a similar point: "We cannot assume that individual gains and interests are the same as those of the larger community."

162. These claims and criticisms are woven throughout the public discourse and political debate surrounding shared equity homeownership in the United States. Rarely is there a specific publication that may be cited as their primary source. The present chapter is focused on documenting as fully as possible the published evidence for or against these claims and criticisms. Little effort was made to discover the origins of the claims and criticisms themselves.

163. Much of the research that purports to "prove" the positive impact of market-rate homeownership on a host of individual and social outcomes has been found, in fact, to be deficient in many ways, due in part to a tendency among researchers to focus only on the virtues of this favored form of tenure, ignoring its shortcomings and risks. These deficiencies are discussed by Apgar (2004); Dietz and Haurin (2003); Rohe, Van Zandt, and McCarthy (2002); and Rohe and Stewart (1996). The benefits of market-rate homeownership for low-income households, in particular, have seldom been weighed against its costs and have rarely been the focus of serious study, a point that is made by Shlay (2006).

164. Evidence for the lower incomes of the occupants and the lower prices of the homes in shared equity housing versus market-rate housing can be found at Chicago Mutual Housing Network (2004: 17), Coalition for Nonprofit Housing & Economic Development (2004), Davis and Demetrowitz (2003), and Pitcoff (2002).

165. Although the amount of subsidy may be the same, helping households at the same level of income to acquire a home, the manner in which the subsidy is invested is often quite different. When assisting market-rate homes, subsidies are typically targeted to the mortgage; that is, they are used to reduce a homebuyer's monthly cost of financing a commodity that is priced beyond the homebuyer's reach. When assisting shared equity homes, subsidies are targeted to the property (at least that is the sponsor's preference). They are used to reduce the price of a home to the point where a low-income household can afford to buy it – a below-market price that is maintained for the next buyer as well. Some proponents of shared equity housing are quite vehement in insisting that only the second approach to subsidizing homeownership deserves to be called "affordable housing." Subsidizing a homebuyer's mortgage, they argue, produces "affordable payments" or "affordable financing." It does not produce (or preserve) a single unit of "affordable housing."

166. Since there is reason to believe, moreover, that the average shared equity home, like the average market-rate home, tends to

resell every seven to eight years, the "next generation" for which shared equity housing is being kept affordable may not be too far removed from the first owner-occupants.

167. Evidence for lower operating costs in cooperative housing can be found in CMHC (1992); Gilderbloom and Appelbaum (1988); Miceli and Sazama (1998); Miceli, Sazama, and Sirmans (1994); Parliament, Parliament, and Regmi (1988); Sadacca, Drury, and Isler (1972); Sazama (2000); Sazama and Willcox (1995); Smith (1990); Walker and Gustafson (forthcoming); and Willcox (1953). Evidence for higher operating costs in cooperative housing, on the other hand, has been reported by Saegert (2006).

168. Ordinance No. 2004-11-080, enacted in November 2004, added Chapter 20-27 to Title 20 of the Bellingham Municipal Code, providing a density bonus for projects where 100% of the homeownership units are "permanently affordable."

169. Section 21-40, added to the Burlington Code of Ordinances in April 1993, also provides a 100% waiver of impact fees for "continually affordable" residential projects that serve households earning less than 50% of AMI.

170. A fuller discussion of the "equitable taxation" of resale-restricted, owner-occupied housing was offered earlier in Chapter Four.

171. The average length of affordability controls in California for homeownership housing created through inclusionary housing programs is 34 years. Permanent affordability is required in 20% of the state's inclusionary programs. See *Inclusionary Housing in California: 30 Years of Innovation* (California Coalition for Rural Housing and Non-Profit housing Association of Northern California, 2003: 19–20).

172. James DeFilippis, commenting on an earlier draft, sounded a fair warning on this particular point: "It seems a bit thin to argue that the increasing use of any policy is evidence that the policy is effective. Just look at enterprise zones in the last 20 years – they're everywhere, and pretty much useless." While conceding the "thinness" of such evidence, I would note that municipally imposed resale controls, unlike enterprise zones, enjoy neither the self-interested backing of economic elites nor the protective ideology surrounding more profitable uses of private property. Just the opposite: These controls run against the grain of both. If these controls were not effective in doing what they promise to do, there is less likelihood they could be sustained – or that a growing number of jurisdictions would be adopting them.

173. The consequences of *failing* to impose long-term controls are often better documented. The failed policy of Irvine, CA, for example, has been told by Calavita and Grimes (1998) and CCRH/NHC (2003). Prior to 2001, Irvine imposed no resale controls on owner-occupied units created with municipal assistance. Almost all of the 1,610 units created before that time are no longer affordable, having been resold at market prices. (Irvine learned from its mistakes, however. Not only does it now require long-term affordability for inclusionary units, it has recently launched an ambitious CLT program to create 9,700 units of permanently affordable housing by 2025.) Similarly, Brown (2001) has documented the shortcomings of Montgomery County, MD's first-in-the-nation inclusionary zoning program. Until 2005, the County refused to impose resale controls lasting any longer than 10 years on owner-occupied units or 20 years on rentals. By 1999, only 3,803 units of the 10,572 units created though inclusionary zoning were still governed by affordability restrictions. Acknowledging the failure of short-term controls, at long last, Montgomery County now requires 30 years of affordability for owner-occupied units, including a provision for restarting the 30-year clock for any units reselling within the original control period.

174. Looking behind these averages, 79 of the 97 homes resold through the BCLT became more affordable for the next generation of homebuyers; 6 remained equally affordable; and 12 became less affordable. Every one of the homes that became less affordable on resale, relative to their initial selling price, was still offered for a price that a four-person household earning less that 70% of AMI could afford.

175. Over the long term, the public's cost of subsidizing rental housing for a given income level may be greater than the subsidy cost for homeownership, since the former often includes not only upfront subsidies to construct the project, but also ongoing subsidies to operate the project and to lower its rents to an affordable level.

176. Nationally, the median length of tenure for renters in market-rate housing is 2.1 years; the median length of tenure for homeowners in market-rate housing is 8.2 years (Rohe, Van Zandt, and McCarthy (2002: 392).

177. Saegert (2006: 3) provides evidence that co-op residents behave like any other homeowners in making capital expenditures on infrastructure, in order to maintain or enhance the value of their housing. Evidence for the superiority of co-op housing over rental housing in maintaining the condition of residential units can be found in Miceli, Sazama, and Sirmans (1994); Saegert et al. (2004: 22); Sazama and Willcox (1995: 27); Smith (1990); and Willcox (1953).

178. Despite the arguments offered by Cooper and Rodman (1994), Saegert and Benitez (2005), and Selby and Wilson (1988) that cooperatives may be especially beneficial for groups with special needs, little research has been done showing either a preference for co-op housing among these populations or a higher rate of satisfaction or success among special-needs populations who already reside in cooperative housing.

179. Among those raising such concerns are Apgar (2004); Barker (2005); Goetzmann and Spiegel (2002); Hockett, McElwee, Schwartz, and Treskon (2005); Pitcoff (2003); Reid (2005); Retsinas and Apgar (2005); and Shlay (2006).

180. It is not only predatory lending in the sub-prime market that has the potential for undermining the security of low-income homeowners. The "creative financing" of regulated lenders may do so as well. According to the Mortgage Bankers Association, 25% of all mortgages in the United States – 10 million – now have adjustable interest rates. Most of these mortgages are held by people with subpar credit ratings. As interest rates rise, the residential security of many of these people may be in jeopardy. "Of the 7.7 million households who took out ARMs over the past two years to buy or refinance, up to 1 million could lose their homes through foreclosure over the next five years" (Knox, 2006). The mortgage screening, default intervention, and foreclosure prevention that accompany most shared equity housing may make for fewer losses than may soon be seen among the owner-occupants of market-rate housing.

181. The right to intervene in cases of default, preventing loss of resale-restricted homes and the displacement of low-income homeowners, can be incorporated into deed-restricted housing as well. This is far less common a programmatic component of deed-restricted housing, however, than of housing developed through LECs and CLTs.

182. Estimate provided by the director of the Homeownership Center for the Burlington Community Land Trust. When becoming aware that a homeowner is in trouble, the BCLT immediately suspends collection of its own lease fees and begins working with the homeowner. The BCLT may help the homeowner to pay property taxes and may work directly with the mortgagee, typically the Vermont Housing Finance Agency, to restructure the loan Davis and Demetrowitz (2003: endnote 25). Such proactive intervention on the part of the BCLT has helped to limit the number of homes that have proceeded all the way to foreclosure. Over a 20-year period, with a 400-unit portfolio of owner-occupied houses, condominiums, and cooperative apartments, the BCLT has had only seven foreclosures.

183. If forced to use "homeownership" when referring to CLTs, LECs, or deed-restricted housing, these critics tend to add a grudging modifier like "second-class" or "third-class." Left to their own devices, however, they are more likely to attach a derogatory label like "indentured tenancy," "glorified tenancy," "sharecropper housing," or "socialist housing."

184. Blakeley and Snyder (1997: 21) add to the list of controls commonly imposed on market-rate homeowners by their HOAs: "Rules on exterior maintenance and design are standard, requiring that landscaping conform to a common plan and that houses and front doors be painted a limited number of colors. Pets above certain weight limits are sometimes barred, as are people under a specific age. There may be height limits for shrubs and trees, approved flower lists, prescribed designs for fences and decks. Window air conditioners, backyard swing sets, and satellite dishes are commonly banned. Rules usually forbid hanging laundry outside, leaving garage doors open, parking trucks, campers, or commercial vehicles in driveways, and placing trash cans out on the street before a certain hour." See also McKenzie (1994) and Low (2003).

185. The purported dependency of shared equity homeowners might also be contrasted, somewhat ironically, with the mounting mortgage indebtedness of the nation's market-rate homeowners, which Michael Hudson (2006) has described as "the new road to serfdom."

186. As Clapham and Kintrea (1992: 109) have pointed out, after noting the greater control that co-op members are able to exercise over their housing when compared to the other housing they might be able to afford, "the relevant comparison is not with some abstract conception of autonomy, but with alternatives open to members."

187. This newfound sense of independence and control has been found among the residents of MHA housing (DeFilippis, 2002), the residents of CLT housing (Levinger, 2001), and the residents of LECs (Clapham and Kintrea, 1992; Cooper and Rodman, 1992: 242; Miceli, Sazama, and Sermans, 1994; Levitt and Saegert, 1990; Saegert and Benitez, 2005).

188. The evidence is strong for some of these effects, but weak for others. For a review of the evidence, see Rohe, Van Zandt, and McCarthy (2002) and Dietz and Haurin (2003). The clearest relationship has been found between higher rates of homeownership and better property maintenance and longer tenure (Rohe and Stewart, 1996).

189. For examples of shared equity housing serving as a stabilizing factor in disinvested neighborhoods, see the case profiles of the Time of Jubilee CLT and the Hermitage Manor Cooperative in Chapter Two. Another example is the Dudley Street Neighborhood Initiative, which has used a CLT to hold land and to preserve the affordability of owner-occupied housing in Boston's Roxbury neighborhood. DSNI's story is told in Medoff and Sklar (1994) and Mahan and Lipman (1996).

190. For examples of shared equity housing serving as a stabilizing factor in gentrifying neighborhoods, see Saegert and Benitez (2005), Coalition for Nonprofit Housing & Economic Development (2004), and Davis (1991).

191. Some evidence for this conclusion is found in Davis and Demetrowitz (2003). Examining the entire stock of owner-occupied houses and condominiums developed by the BCLT between 1984 and 2002, they found that 95% (247 out of 259) of these units were still under the BCLT's control. The BCLT continued to regulate their occupancy, use, and affordability. They continued to be occupied by homeowners. BCLT homeowners occasionally defaulted on their financial obligations to third-party lenders, but the BCLT intervened to prevent most of these defaults from proceeding to foreclosure. On the seven occasions when a foreclosure did occur, the BCLT reacquired title and resold the home to another low-income homeowner. All seven homes remained in the BCLT's portfolio.

192. Three such high-profile failures, none of which was a sponsor of shared equity homeownership, are Eastside Community

Investments in Indianapolis (Steinbach 2000; 1999), Banana Kelly in the Bronx, NY (Waldman, 2003), and Peoples Housing in Chicago (Cuadros, 1996). A general discussion of "failures, downsizings, and mergers" among CDCs can be found in Rohe and Bratt (2003).

193. The lower default rates for Section 213–insured cooperatives, reported in CMHN (2004: 12), includes both LECs and market-rate cooperatives. Additional evidence for the financial stability of cooperatives is presented by Miceli, Sazama, and Sirmans (1994).

194. Of the surviving LECs, the report concluded that 80% were in "stable" or "excellent" condition, but 20% were "severely troubled and in need of immediate assistance" (CNHED, 2004: 12–13).

195. Data compiled by the Urban Homesteading Assistance Board and reported in Saegert and Benitez (2005). Most of these LECs, which are officially known in New York as "Housing Development Finance Corporations," were developed in occupied buildings taken by New York City in lieu of taxes.

196. Not every one of the nonprofit organizations included in analysis done by Burlington Associates calls itself a community land trust, but all of them incorporate key features of the CLT model into their mission and program. In particular, they are committed to developing permanently affordable, resale-restricted, owner-occupied housing on land that is leased from a nonprofit landowner. This study was conducted with the assistance of Kirby White at Equity Trust and Jeff Yegian and Julie Orvis at the Institute for Community Economics. Its findings are posted at www.burlingtonassociates.com.

197. There is also the problem, when government administers these contractual controls, of "who watches the watcher?" In the 1990s, an investigation of the Boston Redevelopment Authority discovered that resale-restricted condominiums, funded and regulated by the BRA as affordable housing for low-income households, were being illegally bought and sold by the families and friends of BRA staff.

198. See the profiles of ARCH (King County, WA) and Homes for Good (Massachusetts) in Chapter Two, herein.

199. Examples of such regulatory redundancy include: limited equity cooperatives constructed on land that is leased from a CLT; dissolution clauses in the bylaws of CLTs and other sponsors of resale-restricted housing which designate a successor organization to take over the dissolved corporation's property rights and regulatory responsibilities; and grantee agreements, performance contracts, and covenants that allow a public funder to enforce use and resale controls contained in a ground lease or covenant should the nonprofit sponsor of shared equity housing no longer have the solvency, capacity, or inclination to monitor and enforce these controls.

200. Ruminations on the factors that either contribute to the success or inhibit the success of LECs can be found in Rohe and Stegman (1993); Rohe (1994); Sazama (2000); Sazama and Willcox (1995); and Skelton (2002: 25–27). See Greenstein and Sungu-Eryilmaz (2005) for a CLT research agenda that includes the question, "Why have some CLTs excelled and others failed?"

201. The concept of wealth used here is the one proposed by Oliver and Shapiro (1997: 2): "Wealth is what people own, while income is what people receive for work, retirement, or social welfare. Wealth signifies the command over financial resources that a family has accumulated over its lifetime along with those resources that have been inherited across generations. . . . Wealth is a special form of money not used to purchase milk and shoes and other life necessities." Or, as they later put it, income is what you use to get by day by day; assets are what help you to get ahead.

202. Aside from the forced savings that are built up through mortgage amortization, some supporters of shared equity housing have suggested there may be an increase in voluntary savings as well, because of the stabilization in a family's monthly housing costs. No one has yet attempted to research this hypothesis, however.

203. The BCLT uses a "shared appreciation" formula (see the discussion of resale formulas in Chapter Three, herein). When BCLT homeowners resell their ownership interest, they receive 25% of the market appreciation attributable to their ownership interest, plus the price they paid in purchasing the home.

204. The size of these equity gains varied from homeowner to homeowner, depending on length of residence, type of housing, price paid for the home, interest rate charged on the mortgage, and growth in the home's appraised value (if any). Generally, the longer a home was owned, the greater were the homeowner's proceeds. Owners who paid a higher price for their homes and a lower rate for their mortgages had higher gains. And, because the BCLT's resale formula is tied to changes in the appraised value of BCLT homes, those owners whose homes appreciated greatly in value gained more equity than those owners whose homes appreciated minimally or not at all. There were 34 BCLT homeowners who realized no gain from appreciation, either because there was no increase in the appraised value of their homes or because, in four cases, appreciation occurred but foreclosure prevented the homeowner from receiving a share (Davis and Demetrowitz, 2003: 18).

205. Portrayed in Figure 5.1 is the net equity earned by 97 homeowners, over and above the return of the homeowner's initial downpayment, typically around $2,000. Net equity includes both the retirement of mortgage principal and the homeowner's share of appreciation (Ibid, 2003: 17).

206. Between 1974 an 2004, home prices in the United States rose at an annual rate of 5.95%, according to the Office of Federal Housing Enterprise Oversight (http://www.ofheo.gov/HPI.asp). The OFHEO is the federal agency charged with oversight of Fannie Mae and Freddie Mac. Their Housing Price Index tracks

the change in resale prices for homes with Fannie Mae or Freddie Mac mortgages.

207. Davis and Demetrowitz are careful not to suggest that the wealth accumulated by a BCLT homeowner was the sole explanation or even the principal explanation for this "trading up." Indeed, they assert that "something else was at work; something else was to credit for the sheer number of homeowners who ended up in market-rate homes after leaving the BCLT." Unfortunately, they did not have data which might have allowed them to say what this "something else" might be.

208. Shapiro (2004: 62), for one, is quite candid on this account: "Previously, we discussed the idea of transformative assets, meaning resources that can put a family on an economic and social path beyond the means of their salaries. We never quantified an amount because this is a relative concept based on a family's starting point and the requirements for upward mobility." He goes on to show, however, that access to even a modest amount of wealth in the $9,600 to $17,600 range can make an enormous difference in the lives and prospects of low-income people – a range within the parameters of the gains realized by many owners of shared equity homes. Proponents for Individual Development Accounts (IDAs) have set the bar far lower. Their claim is that even $2,500, the average amount of wealth accumulated by lower-income owners through IDAs, can have a transformative effect. See Sherraden (1991) and Mills, Patterson, Orr, and DeMarco (2004).

209. The other unexamined assumption, of course, is that homeownership which is not encumbered with resale restrictions will necessarily generate "enough" wealth to significantly improve the lives of low-income families. For that to happen, a market-rate home must be kept in good condition and must be located in a neighborhood where real estate values are rising. The homeowner must be able to hang onto the property for many years. The homeowner must also be able to "unlock" the equity that has accumulated in the property, usually by selling and vacating the home (although various credit instruments now allow access to this equity as well). Many homes that are purchased by low-income households, however, are older properties in need of costly repairs (Pitcoff, 2003: 10). Many homes that are owned by low-income households – and African-Americans, in particular – are located in cold markets, resulting in lower rates of equity buildup (cf., Goetzmann and Spiegel, 2002; Oliver and Shapiro, 1997; Parcel, 1982). Furthermore, most homes that are owned by low-income people will continue to be occupied by them or their heirs. Their use value will take precedence over their monetary value. As Oliver and Shapiro (1997: 59) have noted: "Most people do not sell their homes to finance a college education, buy medical care support, political candidates, or pay lobbyists to protect their special interests. Even if a family sells a home, the proceeds are typically used to lease or buy replacement housing."

210. Such subsidies include donations of buildings or vacant lands, grants for the acquisition, construction, or rehabilitation of owner-occupied housing, and low-interest or no-interest loans for constructing or mortgaging such housing. They may also include such indirect subsidies as fee waivers, density bonuses, or below-market prices for inclusionary units mandated by city or county governments.

211. The paucity of research in this area may be due, in some measure, to the fact that criticism of the claim that shared equity housing preserves community wealth has been rather muted. Many of the same people who are most critical of equity limitation are frequently found among the ranks of those who are equally critical of "wasteful spending" by government. They may be reluctant to declare too loudly, therefore, that subsidized homeowners deserve to pocket every precious dollar the public has poured into their properties. Staying silent on that aspect of shared equity housing which is most fiscally conservative, they find other ways to attack these nonmarket models of homeownership.

212. This conclusion is based on the work of Calhoun and Walker (1994).

213. These subsidies came from only two sources: grants from public agencies and price concessions extracted from private developers through municipal measures like inclusionary zoning. Although Davis and Demetrowitz acknowledged that other public grants and private donations had helped to support the operations of the BCLT since 1984, making the community's total investment more than the amount invested and retained in individual housing units, the only subsidies they were able to compute with any accuracy were those with a direct impact on lowering the price that was actually paid for a particular property by a particular homebuyer.

214. When the BCLT's resales were considered as a whole, the community's investment was found to have grown in value by 38%. At initial sale, the subsidies contained in the 97 houses and condominiums averaged $15,723 per home. At resale, the subsidies retained in these same homes averaged $21,645 per home. Had these subsidies been removed – carried away in the pockets of the departing homeowners – the city or some other public agency would have needed to re-subsidize this housing to the tune of $2,099,590 for the same homes to have been purchased by households at the same average level of income (68% AMI) as those who were actually served by the BCLT on resale.

215. LECs may have a unique ability to involve some populations that are normally excluded. As observed by Levitt and Saegert (1990: 231): "Because the elderly, women, and children center their lives closer to home, housing centered programs have a much greater chance of involving them, and of their involving others."

216. In the same survey, on the other hand, 35% of the officials representing limited equity cooperatives and 38% of the officials from market-rate cooperatives complained that "few members participate."

217. In larger CLT developments, there is often a homeowners' association for that particular residential community. In these situations, a CLT's homeowners may be more actively involved in their project-specific associations than in the CLT itself. An interesting question for future research is whether involvement in one is more likely to increase or to decrease involvement in the other.

218. Indeed, there may be more of an incentive here for antagonistic relations than cooperative relations, where the owners of resale-restricted housing organize against their municipal sponsor. See, for example, Parsons (2005), who reports on a group of homeowners in Monterey County, CA, who joined together to contest the long-term resale restrictions on their publicly assisted homes.

219. See, for example, Peterman and Sullivan (1971).

220. DeFilippis (2002), Cooper and Rodman (1992), Miceli, Sazama, and Sermans (1994); Levitt and Saegert (1990); and Saegert and Benitez (2005).

221. See Levitt and Saegert (1990); Miceli, Sazama, and Sermans (1994); Sadacca, Drury, and Isler (1972); Saegert and Winkel (1998); Saegert, Winkel, and Swartz (2002); and Sazama and Willcox (1995).

222. Rohe, Van Zandt, and McCarthy go on to caution, however, that "limitations in the design of most of the extant research do not fully account for the possibility of a spurious relationship between participation and homeownership." An earlier piece of research done by Rohe and Stegman (1994), moreover, found that participation in some types of civic activities may be more likely than others. They found that homeowners were more likely to participate in neighborhood and block associations, but not more likely than renters to participate in other community organizations.

223. An earlier study by DiPasquale and Glaeser (1999) found length of residence to be the most important factor influencing the level of neighborhood involvement. Homeowners tend to live in the same neighborhood longer than renters, so they tend to be more involved. Unless the length of residence for market-rate homeowners is shown to exceed the length of residence for shared equity homeowners, there should be no difference in the level of involvement between these tenures.

224. The percentage reporting no change in their level of neighborhood involvement was much closer for both types of housing: 52.9% for the co-op members and 60.9% for the renters.

225. Saegert et al. (2003); Mirceli, Sazama, and Sirmans (1994).

226. There was no evidence, on the other hand, that living in co-op housing actually caused these improvements. Indeed, when asked directly whether having a co-op apartment contributed to these positive changes, most respondents either left the question unanswered or answered "no." There were a couple of exceptions. Among those households who reported an increase in personal savings, 17 out of 27 (63%) attributed this change to living in an LEC. Among those households who reported an increase in their "general happiness," 49 out of 57 (86%) credited the cooperative with this positive result.

227. As James DeFilippis has noted, in criticizing Levinger's study, people have a tendency to look back at big decisions they have made in life as the right decision, regardless of whether the decision actually had all the positive effects they report.

228. See, for example, Aaronson (2000); Boehm and Schlottman (1999); Green and White (1970); Harkness and Newman (2002); and Haurin, Parcel, and Haurin (2002).

229. The CLTs in these cities are Time of Jubilee (Syracuse), Durham Community Land Trustees (Durham), and the New Columbia Community Land Trust (Washington, DC). More information on Time of Jubilee can be found in the profile presented in Chapter Two. The story of the Durham CLT is told in the video *Homes & Hands* (Chasnoff and Cohen, 1998).

230. The CLTs in these cities are the Sawmill Community Land Trust (Albuquerque) and Dudley Neighbors, Inc., a subsidiary of the Dudley Street Neighborhood Initiative (Boston). Descriptions of Sawmill can be found in Greenstein and Sungu-Eryilmaz (2005), Chasnoff and Helen Cohen (1998), and the profile presented in Chapter Two, herein. The story of Dudley Neighbors and DSNI is told by Medoff and Sklar (1994), Taylor (1995), and the video *Holding Ground* (Mahan and Lipman (1996).

231. The CLTs in these cities are the Burlington Community Land Trust (Burlington, VT) and the Northern Communities Land Trust (Duluth, MN). More information on the BCLT can be found in Davis and Demetrowitz (2003), Chasnoff and Cohen (1998), and Fireside (2005).

232. See the profile of Chicago's Hermitage Manor Cooperative in Chapter Two and the story of Cincinnati's Park Town Cooperative Homes in Davis (1991). Each of these 221(d)(3) cooperatives was developed as part of its respective city's urban renewal program.

233. Leavitt and Saegert (1990); Saegert and Winkel (1998); Task Force on City Owned Property (1993); and White and Saegert (1997).

234. See Rohe (1995, 1994b) and Rohe and Stegman (1993).

235. For more on inclusionary programs and fair share plans, see Avault and Lewis (2000), Axel-Lute (2003), Brown (2001), Calavita (2004), Calavita, Grimes, and Mallach (1997), California Coalition for Rural Housing & Non-Profit Housing Association of Northern California (2003), Davis (2005), Heudorfer (2003), Mallach (2004, 1994, 1988, 1984), and Meck, Retzlaff, and Schwab (2003).

236. The three CLTs in the counties surrounding Minneapolis and St. Paul are the Chaska CLT, the Two Rivers CLT, and the West Hennepin Affordable Housing Land Trust.

237. The Portland CLT and the Clackamas County CLT have played the leading role in this regard. For an argument that CLTs should be linked more extensively to smart growth initiatives and concerns, see Harmon (2003).

238. The argument for shared equity housing promoting diversity in suburbia has been described as follows: "Cooperatives, community land trusts, and other models of private, nonmarket homeownership have proven to be particularly effective in 'opening the burbs' to classes and races who have long been excluded. Resistant planning commissions and suspicious neighbors often find it easier to accept below-market housing when it is to be occupied by 'responsible' homeowners and overseen by a 'responsible' nonprofit. More importantly, when mutual aid and social supports are incorporated into the very fabric of the housing that is theirs, lower-income households moving into inhospitable suburban settings can find it easier to weather the chilly reception that too often awaits them" (Davis, 2006: n. 57).

## Chapter Six: Epilogue

239. This echoes Apgar's call for a "choice-enhancing housing policy" (2004: 49), the National Housing Conference's advocacy for "strengthening the ladder for sustainable homeownership" (2005: 12–13), and the case for "rebuilding the housing tenure ladder" previously made by Davis (1994: 14, 78; 2000: 241–42). Years earlier, Kemeny (1981) argued for a "tenure-neutral" housing policy and Catherine Bauer (1957) admonished housing planners "to make sure that public policies keep the 'effective market' broad enough to provide some real selection at all economic and social levels."

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# APPENDIX A:
# Notes on Study Methodology

## Literature Review

The purpose of the present study was not to conduct original research, but to collect, catalogue, review, and assess what is already known – and not known – about shared equity homeownership in the United States with an eye toward creating an analytic framework for future research. A literature search, conducted via university libraries and the World Wide Web, collected published and unpublished evaluations of the performance of various models of shared equity housing in a variety of settings. A complete list of the literature consulted can be found in the Bibliography.

## Field Interviews

The evaluative literature, examining best practices, public policies, and organizational performance, proved to be in relatively short supply, prompting a heavy reliance on the testimony of practitioners in the field. Dozens of practitioners were formally interviewed or informally consulted during the course of this study, including those serving on the project's advisory committee (see below). These practitioners included:

- Developers and managers of shared equity housing projects.
- Staff and board members from organizations, public or private, who are funding shared equity housing.
- Staff members from municipal governments or regional nonprofits who are charged with the task of monitoring and enforcing the use and resale restrictions of shared equity housing.
- Consultants and attorneys who are involved in advising the sponsors of shared equity housing.
- Staff members, board members, and, in a few cases, low-income homeowners of LECs, CLTs, and deed-restricted houses or condominiums.

## Profile Selection

The nine "case profiles" that appear in Chapter Two were selected to illustrate the range of places in which deed-restricted housing, CLTs, and LECs have found a niche, the range of roles these organizations play in their respective communities, the range of populations these organizations serve, and the range of housing tenures and types contained within the price-restricted domain of shared equity homeownership.

Cases were drawn from big cities and small cities; rural counties and metropolitan areas; affluent suburbs and impoverished, inner-city neighborhoods; strong markets and weak markets. In some communities, shared equity homeownership has been an agent of redevelopment, attracting investment and creating a market for owner-occupied housing where none existed before. In other communities, shared equity homeownership has played the opposite role: buffering the pressures and disruptions of market investment; preserving the affordability of owner-occupied housing; and preventing the displacement of lower-income people. Both roles are represented among the cases selected.

An effort was also made to include cases from communities with different racial and ethnic compositions and to include cases illustrating the application of shared equity homeownership to different types of housing, including: detached, single-family houses; row houses; townhouses; multiunit buildings; and manufactured housing.

No suggestion is made that the nine organizations profiled in Chapter Two are the "best and brightest" of

the hundreds of sponsors of shared equity housing in the United States, although every one of them is an especially successful example of the performance and potential of its particular approach to shared equity homeownership.

## Professional Experience

Since 1993, the author and his six partners in Burlington Associates in Community Development have assisted nonprofit organizations, cooperative housing corporations, municipal governments, and state agencies in 38 different states with the design, implementation, and evaluation of various types of shared equity homeownership. Although community land trusts have received the largest share of this assistance, Burlington Associates has also been involved with limited condominiums, limited equity cooperatives, and deed-restricted housing. The landscape assessment contained herein draws heavily on this professional experience, especially the discussion of the programmatic components of shared equity homeownership in Chapter Three.

## Project Advisory Committee

At the start of the study, the National Housing Institute invited two dozen practitioners, academics, funders, and policymakers to serve on a national advisory committee for this project. Members of the advisory committee were asked: (1) to critique the assumptions, proposals, outlines, and methodology for tackling the subject of shared equity homeownership; (2) to recommend literature, research, and cases that might be relevant to the project; and (3) to critique drafts of the final report. The committee's participation was conducted principally through e-mail exchanges and an occasional conference call. A single, face-to-face roundtable discussion of the preliminary findings of the Phase One report was held at the Ford Foundation on December 15, 2005. The report was then substantially revised, taking into account the committee's detailed critique of the initial draft.

# APPENDIX B:
# National Advisory Committee

**David Abromowitz**
Goulston & Storrs
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**Dewey Bandy**
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**James DeFilippis**
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# APPENDIX C:
# About the Author

**John Emmeus Davis** is a co-founder and partner in Burlington Associates in Community Development, a national consulting cooperative specializing in the development of organizations, policies, programs, and projects promoting resale-restricted, owner-occupied housing. Since 1993, the cooperative's seven partners have assisted nonprofit organizations, municipal governments, and state agencies in 38 states in the U.S.A.

Several of the cooperative's partners, including Davis, have been leading members of the community land trust movement since the early 1980s, helping dozens of CLTs to get started and many mature CLTs to increase the sustainability of their portfolios and their operations. In 2005, Burlington Associates created a "CLT Resource Center" on its web site (www.burlingtonassociates.com), offering free copies of training materials, legal documents, program evaluations, and other technical materials developed by BA's partners over the years.

Davis previously served for 10 years as Burlington, Vermont's housing director. He also planned and coordinated the city's Enterprise Community. Prior to employment with the City of Burlington, Davis worked for the Institute for Community Economics in Cincinnati and Boston.

Davis is a graduate of Vanderbilt University and Cornell University, holding an M.S. and Ph.D. from the latter. He has taught housing policy and neighborhood planning at New Hampshire College, the University of Vermont, and the Massachusetts Institute of Technology. His publications include *The Community Land Trust Handbook* (1984), *Contested Ground: Collective Action and the Urban Neighborhood* (1991), *The Affordable City: Toward a Third Sector Housing Policy* (1994), *Bridging the Organizational Divide: The Making of a Nonprofit Merger* (2002), and *Permanently Affordable Homeownership: Does the Community Land Trust Deliver on Its Promises?* (2003). He is currently a faculty associate at the Lincoln Institute of Land Policy and a research fellow at the National Housing Institute.

**The National Housing Institute** (nhi.org) is an independent nonprofit research and education organization dedicated to community revitalization by empowering residents of low-income neighborhoods, strengthening the civil society and enhancing the work of community builders through public policy and programmatic analysis, development and promotion. Founded in 1975, we communicate our research through symposia, reports and in our national journal *Shelterforce*.

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