Articles

More Than Money: What Is *Shared* in Shared Equity Homeownership?

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Shared equity homeownership is a sector in flux with new models of resale-restricted, owner-occupied housing, or new permutations of older models, appearing nearly every year. Community land trusts (CLTs), limited equity cooperatives (LECs), and price-restricted houses and condominiums with affordability covenants lasting longer than thirty years remain the signature species within this changing environment, but they are evolving as well. Forced to adapt to the harsh conditions of a fluctuating economy, the shifting requirements of public funding, and the competition for a sustainable niche within a political landscape densely populated with policies and programs favoring tenures very different than themselves, CLTs, LECs, and other forms of shared equity housing have shown remarkable resiliency. They have continually added organizational and operational characteristics that have allowed them not only to survive but to spread to every region of the United States and to other countries as well.[1]

As these models have evolved, so has the conceptual and operational meaning of shared equity homeownership. Previously known as *limited equity housing*, this family of nongovernmental, nonmarket tenures is increasingly being called by a different name: *shared equity homeownership*. This

1. Community land trusts have only recently taken root outside the United States, especially in England and Australia. *See* Jennifer Aird, *Reviving Community Ownership in England: CLTs Are Ready to Take Over the Land*, *in* The Community Land Trust Reader 449–63 (John Emmeus Davis ed., 2010); Louise Crabtree, *Fertile Ground for CLT Development in Australia*, *in* The Community Land Trust Reader, *supra*, at 464–74. LECs, by contrast, have had a long history outside the United States, especially in Scandinavia. Deed-restricted houses and condominiums are confined mostly to the United States.

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name change is not merely cosmetic, a new way of branding an old product. It represents a closer reading of what is actually shared in these unconventional models of owner-occupied housing and a deeper appreciation for what is prudently and practically needed for lower-income renters not only to become homeowners but to sustain homeownership over time.

Shared equity housing, I shall argue here, is more than a mechanism for reallocating the economic value that accrues to residential property so that affordability may be preserved across successive generations of income-eligible homebuyers. It is not only the rewards of homeownership that are shared in CLTs, LECs, and deed-restricted homes but the rights, responsibilities, and risks of homeownership as well. It is not only affordability that is protected by these unconventional models of tenure but housing quality and homeowner security as well. By restructuring the "owner's interest" and introducing a stewardship regime that remains in effect long after a home is sold, shared equity homeownership does what market-rate homeownership often fails to do: it prevents the loss of affordably priced homes, especially when housing markets are very hot or very cold. Shared equity homeownership promises a better outcome for people of modest means: homes that last.

More Than Earnings That Are Unilaterally Limited

In 2004, the National Housing Institute (NHI) commissioned a pioneering study of models of homeownership in which affordability is contractually maintained for many years.[2] As the publisher of *Shelterforce*, a magazine dedicated to presenting timely news about affordable housing and community development, NHI had become aware of a trend that had largely eluded other experts doing research and writing in this field. Many of the articles that NHI was publishing about the proliferation of inclusionary zoning, incentive zoning, housing trust funds, and other municipally sponsored programs for expanding homeownership for families of modest means revealed a growing concern for what happened to these homes *after* they were sold. More and more cities, and a few states as well, were beginning to impose long-term contractual controls over the use and resale of owner-occupied housing being brought within the reach of lower-income homebuyers by the investment of public dollars or the exercise of public powers. Similarly, an increasing number of cities and states were giving priority in distributing their housing largess to CLTs and other nonprofit developers of affordably priced homes that were using ground leases or deed covenants to preserve the affordability of the publicly subsidized, privately owned homes within their portfolios.

2. John Emmeus Davis, Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing (Nat'l Hous. Inst. 2006), *available at* http://www.nhi.org/pdf/SharedEquityHome.pdf.

Despite this rise in governmental support for resale-restricted, owner-occupied housing, most policy research and academic writing about increasing the homeownership rate was still stubbornly focused on mechanisms for removing credit barriers or lowering mortgage payments for the purchase of market-rate homes. Little attention was being paid to nonmarket models of homeownership that restricted the price of publicly assisted homes across multiple resales, maintaining their affordability for many years.[3]

NHI set out to correct this oversight, beginning with a general assessment of what was presently known and not known about the prevalence, variation, and performance of these unconventional forms of tenure. This research was overseen by a national advisory committee of academics, practitioners, and funders recruited by NHI on the basis of each person's prior involvement with at least one of the models under review.[4] None of these models was given priority over another, either in the committee's selection or in the study's design. Rather, NHI took the unprecedented tack of treating these models as a single sector, believing that their similarities matter more than their differences. NHI argued, moreover, that the best way to bring each of these models to scale was to craft policies and programs promoting the sector as a whole.

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3. The best example of such systematic inattention can be found in an otherwise excellent anthology, LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL (Nicolas Retsinas & Eric Belsky eds., Brookings Inst. 2002). The "iconoclastic scrutiny" promised by the editors, asking whether homeownership is "truly good for low-income buyers, their communities, and the country," did not extend to scrutinizing the dominant form of tenure into which most of these buyers are boosted. Among the book's sixteen essays, there is no mention of any form of owner-occupied housing other than traditional market-rate homeownership.

4. The members of the national advisory committee were David Abromowitz (Goulston & Stoors), Dewey Bandy (California Coalition for Rural Housing), Rachel Bratt (Tufts University), Michael Collins (PolicyLab Consulting Group), James DeFilippis (Baruch College, CUNY), Michael Diamond (Harrison Institute for Public Law), Doug Dylla (NeighborWorks America), Norman Harrower (Community Foundation Land Trust), Lee Higgins (NeighborWorks America), Douglas Klein (National Association of Housing Cooperatives), Raymond Leech (Fannie Mae), Jim Libby (Vermont Housing and Conservation Board), George McCarthy (Ford Foundation), Andrew Reicher (Urban Homesteading Assistance Board), William Rohe (University of North Carolina), Kalima Rose (PolicyLink), Mary Ann Rothman (Council of NY Cooperatives and Condominiums), Susan Saegert (Center for Human Environments, CUNY), Stuart Saft (Wolf, Haldenstein, Adler, Freeman & Herz), Carey Shea (Habitat for Humanity), Vanitha Venugopal (Surdna Foundation), Kirby White (Equity Trust), Woody Widrow (Texas IDA), and Jeff Yegian (Institute for Community Economics). Also participating in the committee's deliberations were Harold Simon, NHI's executive director; Alan Mallach, NHI's research director; and John Emmeus Davis, who was commissioned by NHI to carry out this research into resale-restricted, owner-occupied housing and to write up its results. DAVIS, *supra* note 2, at 147.

Halfway through its research process, NHI's advisory committee decided that a new term was needed to describe this sector. Most generic names employed in the past, like *limited equity housing* and *nonspeculative homeownership*, had placed a one-sided emphasis on what homeowners gave up. Their personal earnings, when reselling their ownership interest, were limited. They were forced to relinquish most of the economic gains that accrued to their property. This suggested a burden that was borne unilaterally (and perhaps unfairly) by the individuals who owned and occupied these homes.

Hoping to shed such negative connotations, the search for a more positive and balanced descriptor began. After weighing the pros and cons of dozens of generic names, NHI's advisory committee settled eventually on *shared equity homeownership*. From the beginning, the committee realized that its choice had two significant disadvantages. The term was unfamiliar, requiring considerable explanation, even among practitioners already working with one or more of the models included in this family of tenures.[5] There was also the risk of adding to the confusion that already existed between models of tenure like CLTs and models of finance like shared appreciation mortgages.[6]

These drawbacks notwithstanding, the compelling advantage of shared equity homeownership was its emphasis on what is *shared* between individual homeowners and the larger community, "focusing specifically on how the appreciating value of residential property is regularly created and to whom it rightfully belongs."[7] Only part of a property's unencumbered value is a product of an individual's personal investment in purchasing and improving the property. The rest of it, often the bulk of it, is a product of the community's investment: equity contributed at the time of purchase in the form of a public grant, charitable donation, or municipally mandated concession from a private developer; and equity accruing to the property over time because of public investment in necessary

5. For many practitioners, the jury is still out on the desirability of *shared equity homeownership* as a generic name for their sector. *Permanently affordable homeownership*, *resale-restricted owner-occupied housing*, *sustainable homeownership*, and *homes that last* are the most commonly proposed alternatives.

6. Under financing schemes like the shared appreciation mortgages sometimes used in the United States and the shared ownership models widely used in Britain, a private investor or a public agency helps lower-income households to purchase homes that would otherwise be beyond their financial reach. In exchange for their front-end assistance, these outside investors receive a proportionate share of the property's appreciation when these homes are eventually resold for the highest price they can fetch on the open market. In deed-restricted homes, CLTs, LECs, and similar models of tenure, by contrast, homes are resold for a restricted, below-market price. Sellers often earn a portion of the appreciation, but most of this value is retained in the home, lowering its price for the next buyer.

7. Davis, *supra* note 2, at 3.

infrastructure (roads, schools, utilities, etc.) and economic growth in the surrounding society.

The latter is what the British call *betterment*. A much older term is *social increment*, coined by John Stuart Mill and popularized by Henry George to describe those gains in land value engendered by the growth and development of society. These gains, according to Mill and George, are "unearned" by private landowners because they had no hand in creating them. They constitute instead "wealth of the community." Because society is the cause of this wealth, society is justified in capturing it and using for the common good. The vehicle proposed by Mill and George was to tax it away.[8]

CLTs, LECs, and other forms of resale-restricted, owner-occupied housing employ a different strategy. They lock this socially created value in place, turning residential property into a permanent repository for subsidies invested and gains deposited over time by the larger community. In market-rate homeownership, any unencumbered value that remains in the home after all debts and liens have been discharged belongs to the owner. In shared equity housing, homeowners claim only the equity they created through their own dollars or labors. They also receive a significant return on their investment, usually walking away with more wealth than they had when first buying their homes. Indeed, the asset-building potential of these unconventional models of homeownership can be quite substantial.[9] But departing homeowners do not walk away with all of the value embed-

8. In Mill's words, "The ordinary progress of a society which increases in wealth, is at all times tending to augment the incomes of landlords; to give them both a greater amount and a greater proportion of the wealth of the community, independently of any trouble or outlay incurred by themselves. They grow richer, as it were, in their sleep, without working, risking, or economizing. What claim have they, on the general principle of social justice, to this accession of riches? In what would they have been wronged if society had, from the beginning, reserved the right of taxing the spontaneous increase of rent, to the highest amount required by financial exigencies?" John Stuart Mill, *On the General Principles of Taxation*, *in* Principles of Political Economy with Some of Their Applications to Social Philosophy 365 (Ashley ed., Charles C. Little & James Brown 1848).

9. *See* Rick Jacobus & John Emmeus Davis, The Asset Building Potential of Shared Equity Homeownership (New Am. Found. 2010), *available at* http://assets.newamerica.net/sites/newamerica.net/files/policydocs/Shared_Equity_Jacobus_Davis_1_2010.pdf; Ken Temkin, Brett Theodos and David Price, *Balancing Affordability and Opportunity: An Evaluation Of Affordable Homeownership Programs with Long-Term Affordability Controls* (Urban Inst. Oct. 2010), *available at* www.urban.org/sharedequity. Jacobus and Davis found that the owners of houses and condominiums developed by the Champlain Housing Trust in Burlington, Vermont, when reselling their price-restricted homes, earned an average annualized rate of return of 25.4 percent on their initial investment. Jacobus & Davis, *supra*, at 19. Temkin, Theodos, and Price, *supra*, examining the wealth-building potential of similar CLT programs in Duluth, Minnesota, and Boulder, Colorado, reported median rates of return of 39 percent and 22 percent, respectively.

ded in their homes. Most of this equity, including the entirety of any public subsidies put into the property and a majority of any market gains accruing to the property, remains in the home at resale, reducing its price for the next income-eligible buyer.

Each generation becomes the beneficiary, in effect, of affordability that exists and persists because every dime of the community's wealth has not been removed by the preceding generation of homeowners. To be sure, this intergenerational sharing of wealth results in an absolute cap on the amount of money that sellers might have realized had they been able to purchase and resell conventional, market-priced homes. But this is not really a limitation on *earnings*. The sellers of shared equity homes get to keep whatever value they have contributed or created themselves. They do not get to pocket what they have not earned, i.e., value that accrues to their land and housing because of the actions of their fellow citizens, near and far.[10]

More Than Gains That Are Fairly Allocated

What is shared in shared equity homeownership, however, goes beyond the back-end distribution of the unencumbered value embedded in residential property. *Equity* is defined more expansively than that, although this broader conceptual and operational reality is often overlooked. When weighing the merits of CLTs, LECs, or deed-restricted homes, too many commentators turn immediately, often exclusively, to the topic of resales. What distinguishes (or damns) these models in their minds is the attempt to regulate the amount of appreciation that departing homeowners may claim as their own. Whatever the model, its resale formula tends to take center stage, provoking an endless debate over whether the gains being pocketed by the housing's sellers are "large enough" to lift them out of poverty or "too much" to preserve the housing's affordability for the next generation of lower-income homebuyers.[11]

10. As Chuck Matthei pointed out a decade ago: "We are challenging the community as a whole to squarely and honestly look at the question of where value comes from, to acknowledge that value comes from *both* the individual who makes an investment of his or her time, skill, and resources *and* the community and society of which that individual is a part." Chuck Matthei, *Speech to the Opening Plenary Session of the National CLT Conference, Albuquerque, New Mexico, August 2000, in* The Community Land Trust Reader 279 (John Emmeus Davis ed., 2010).

11. Twenty-five years ago, I, too, could be counted among those who viewed the redistribution of land gains as the sector's most distinctive feature. In an essay published in 1984, I described three traditions of land reform: redistributing ownership, restricting use, and reallocating equity. *See* John Emmeus Davis, *Reallocating Equity: A Land Trust Model of Land Reform*, *in* Land Reform, American Style 209–32 (Charles C. Geisler & Frank J. Popper eds. 1984). "It is the question of equity," I argued, that sets apart the CLT, LEC, and other representatives of this third tradition of land reform: "[H]ow is property value created; how does the present allocation of value

Certainly this intergenerational sharing of property-based wealth is a defining feature of CLTs, LECs, deed-restricted homes, and the like, but the equity apportioned by these alternative models of homeownership is more than appreciation. It is more than money. *It is the entirety of the owner's interest*, i.e., the total package of rights, responsibilities, risks, and rewards that accompany the ownership of residential property. In market-rate housing, this package belongs mostly to the homeowner. In shared equity housing, it does not.

The occupants of shared equity housing are also its owners. Individually or collectively, they possess many of the same "sticks" in a property's "bundle of rights" that any other homeowner would customarily hold in the United States, benefits and burdens beyond the reach of most people who rent.[12] In the security and longevity of their tenure; in the control they exercise over their living space; in the responsibilities they assume in financing, maintaining, and improving their homes; in the legacy they leave to their heirs; and in the money they contribute and capture for themselves, those who reside in shared equity housing are homeowners.

At the same time, these unconventional models of housing reshuffle the deck of ownership and control. Many of the rights, responsibilities, risks, and rewards that have traditionally come with owning a home are shared with someone else. Someone other than the homeowner exercises significant control over how the property may be used, financed, improved, priced, and conveyed.[13] Someone other than the homeowner retains a long-term stake in the property, helping the occupants to carry out the responsibilities and to manage the risks of homeownership.

That someone is sometimes a governmental agency, perhaps the same one that provided funding for the housing's development or that required inclusion of affordably priced homes as a condition of the municipality's permission to build. The agency remains vested in the resale-restricted,

generate or aggravate the land-related problems that bedevil a local community; how might the reallocation of value begin to alleviate these troublesome problems?" *Id*. at 216. Back then, I defined *equity* only in terms of money: "that portion of a property's market value that is unencumbered by a mortgage or lien; the value that exists free and clear once any liability on a parcel of property has been paid off or subtracted." *Id*. at 209.

12. Depending on the model, the occupants' rights of possession, use, and resale are secured by a deed, by a combination of deed and ground lease, or by the cluster of documents peculiar to LECs: corporate shares, proprietary leases, house rules, and corporate bylaws.

13. Even in market-rate housing, of course, there are often conditions that encumber the owner's interest. Common-interest communities like condominiums, for example, often impose many limits on the use and improvement of the home. But in *limited equity* condominiums there also are restrictions on the resale price of the home and the income of the buyers, key ingredients of shared equity homeownership.

owner-occupied housing it helped to create. There are also cases of a special purpose, quasi-public entity being set up by multiple municipalities to administer resale controls imposed by smaller municipalities.[14]

More often of late, cities and states have been turning to nonprofit organizations to play this stewardship role on the public's behalf. A community development corporation with a long history of developing rental housing may be asked to monitor and to enforce affordability restrictions on owner-occupied housing that a public agency required. Alternatively, these responsibilities may be assigned to a CLT or an LEC, models in which sharing the owner's interest and preserving affordability are built into the organization's mission and operation at inception.[15]

Different stewards tend to employ different contractual mechanisms for establishing and enforcing this reallocation of the rights, responsibilities, risks, and rewards of ownership. Public agencies tend to favor deed covenants or mortgage instruments. CLTs prefer a ground lease. LECs use a combination of occupancy agreements (sometimes known as a proprietary lease), house rules, corporate bylaws, and share certificates to apportion the owner's interest between the cooperative corporation that owns the property and the cooperative's residents who collectively own and govern the corporation.[16] These preferences are not set in stone. There are public agencies that use ground leasing, for example, and there are CLTs that make frequent use of deed covenants, especially when serving as the long-term steward for affordably priced condominiums that a for-profit developer has been compelled to sprinkle throughout a larger, market-priced project because of inclusionary zoning.

14. A Regional Coalition for Housing (ARCH) in King County, Washington, is a prime example. *See* Davis, *supra* note 2, at 33–34.

15. More detailed discussions of various options pursued by public agencies in overseeing long-term restrictions on the use and resale of owner-occupied housing created by the investment of public dollars or the exercise of public powers can be found in John Emmeus Davis & Rick Jacobus, The City-CLT Partnership: Municipal Support for Community Land Trusts (Lincoln Inst. of Land Policy 2008), *available at* www.lincolninst.edu/pubs/dl/1395_712_City-CLT-Policy-Report.pdf; and Rick Jacobus, Stewardship for Lasting Affordability: Administration and Monitoring of Shared Equity Homeownership, Paper Presented at the NeighborWorks Symposium on Taking Shared Equity to Scale (Dec. 12, 2007).

16. The property owned by the cooperative housing corporation usually includes both the land and the building(s). There are also hybrid models of shared equity homeownership, however, where the cooperative owns only the building(s) and leases the underlying land from a CLT or where the cooperative owns only the land and leases out individual lots to the owners of manufactured homes. The latter model, pioneered by the Manufactured Housing Park Program of the New Hampshire Community Loan Fund, is now being promoted nationwide by ROC USA. *See* www.rocusa.com.

Whoever the steward and whatever the contractual mechanism employed to rearrange the owner's interest, this arrangement must last for a very long time to be considered a form of shared equity homeownership. "Forever" is the gold standard here, with many proponents of shared equity housing willing to countenance nothing less than contractual restrictions on the ownership, use, and resale of owner-occupied homes that never lapse. Others have been willing to settle for longevity rather than permanence, accepting a thirty-year standard as the rule of thumb in deciding which models to count as shared equity homeownership.[17] But in every case, the plan is for the contracts and covenants that reallocate the rights, responsibilities, risks, and rewards of ownership to last more than one generation, spanning multiple resales.

More Than Affordability That Is Durably Preserved

The stiffest challenge to any model of shared equity homeownership, and, accordingly, the paramount responsibility of any steward, lies in preserving the affordability of this housing when it is resold. The moment of resale is when there is the most temptation and, in an appreciating real estate market, the greatest financial incentive for sellers and buyers to bypass whatever contractual controls have been placed on the price of the home, the eligibility of the buyer, and the process for transferring the property from one owner to the next. These controls do not take care of themselves. The confidence once vested in self-enforcing covenants has usually proven in practice to be woefully misplaced. Whenever the economic stakes are high enough, there will always be sellers and buyers of resale-restricted housing who find ingenious ways to defeat the equitable allocation of equity and the durable preservation of affordability.[18] Painful experience has repeatedly shown that some organizational entity is needed to watch over these homes if the controls contained in a ground lease, deed covenant, share certificate, or mortgage instrument are reliably to do what they were designed to do. As Jim Libby has written, reflecting on his own state's twenty-five-year policy of imposing and enforcing resale restrictions on housing assisted by the Vermont Housing and Conservation Board:

> For resale-restricted, owner-occupied homes in Vermont, ground leases and housing subsidy covenants, both of which limit the homes' resale price, are

17. If the thirty-year clock is restarted at every resale, an arrangement lasting only thirty years is likely to endure as long as one that is timed to be permanent from the outset.

18. The failure of self-enforcing covenants is discussed more fully in David Abromowitz, *An Essay on Community Land Trusts: Toward Permanently Affordable Housing*, *in* Property and Values: Alternatives to Public and Private Ownership 213–31 (Charles Geisler & Gail Daneker eds., 2000); Davis, *supra* note 2, at 70–74; David Abromowitz & Kirby White, *Deed Restrictions and Community Land Trust Ground Leases: Two Methods of Establishing Affordable Homeownership Restrictions*, *in* The Community Land Trust Reader 327–34 (John Emmeus Davis ed., 2010).

equally valid and enforceable. Even with clear and enforceable legal documents, however, there is recognition in Vermont that effective and sustainable stewardship is the key to success. An adequately staffed entity must stand behind the housing long after it is first rented or sold, performing the duties of stewardship.[19]

It is the steward's job to see that shared equity homes are continually resold at an affordable price to an eligible buyer. The steward may repurchase the home and, after making any necessary repairs, quickly resell it to another buyer who meets the steward's criteria for eligibility. Alternatively, the steward may oversee a direct seller-to-buyer transfer of the home, monitoring the transaction and intervening, if necessary, to ensure that the price is affordable and the buyer is eligible.[20] Either way, all transfers occur under the steward's watchful gaze and proceed only with the steward's explicit approval.

The preservation of affordability is the purpose and performance for which shared equity homeownership is best known. It is no accident that the greatest expansion in the number of CLTs, LECs, and resale-restricted houses and condominiums has occurred during periods of rapid economic growth and in places where the average price of buying a home has been rising much faster than the average income of local residents. The reliability of these models in maintaining affordability over many years is often touted as the principal reason, even the only reason, for doing shared equity homeownership.[21]

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19. James M. Libby, *The Challenge of Perpetuity*, *in* The Community Land Trust Reader 554 (John Emmeus Davis ed., 2010). Deed covenants lasting longer than thirty years, especially those enduring longer than "a life in being," are often deemed less effective and enforceable in protecting affordability than ground leases. *See* Abromowitz, *supra* note 18, at 213–31. Several states, including Vermont, have enacted statutes that explicitly sanction long-lasting deed covenants, however, when used to protect the public interest of retaining public subsidies and preserving publicly subsidized affordability. In Vermont, for example, public and private funders are allowed to impose durable deed restrictions called *housing subsidy covenants*. Authorized under state law (Housing Subsidy Covenants, 27 Vt. Stat. Ann. § 610, enacted 1985; amended 1995), these covenants may be perpetual in duration.

20. In either case, the formula determining the price that the steward must pay to the seller when repurchasing the property or the price that the seller must charge to the buyer when reselling the home directly is spelled out in the ground lease, deed covenant, share certificate, or mortgage to which the homeowner (i.e., the seller) consents when first purchasing the home.

21. Indeed, there is a tendency among friends and foes alike to focus only on the preservation of affordability. The view expressed by Curtin and Bocarsly is fairly common: "When considered in the broader context of affordable housing development, what distinguishes the CLT model from other strategies is its commitment to the preservation of affordability over the long term." *See* Julie Farrell Curtin & Lance Bocarsly, *CLTs: A Growing Trend in Affordable Home Ownership*, 17 J. Aff. Housing & Community Dev. L. 390 (2008).

But durable affordability is not the only thing distinguishing these homes from their market-priced counterparts. Just as the rewards of homeownership are not all that is shared, affordability is not all that is preserved. The long-term survival of shared equity housing and the long-term success of its owners require a steward that is equally attentive to perpetuating the occupancy and quality of these resale-restricted homes and equally protective of the new owners' security of tenure, safeguarding the homeownership opportunities that public funders and their nonprofit partners have made possible.[22]

What is put in place in most models of shared equity housing, therefore, is a multifaceted stewardship regime that does more than merely oversee the transfer of affordably priced homes from one income-eligible buyer to another. The steward is charged with ensuring that shared equity homes continue to be occupied as the principal residence of the same people who own these homes. Absentee ownership is prohibited. Subletting is regulated, if allowed at all. Incentives or penalties are put in place to encourage sound maintenance. LECs, for example, have always established the same sort of reserves for repair and replacement that have long been standard practice in rental housing. In recent years, many CLTs and deed-restricted homeownership programs have followed suit, establishing maintenance escrows or "stewardship funds" to defray the cost of major repairs and system replacements in the residential portfolios under their care.

Stewardship is also focused on managing and minimizing risks that accompany the financing of homeownership, protecting low-income homeowners against the threat of foreclosure. Before a shared equity home is sold, most stewards provide prospective buyers with an intense orientation to their new responsibilities; they impose a screen that prevents their homeowners from entering into predatory or high-cost mortgages; and they carefully match the cost of buying and operating a particular home to the household's ability to carry this added financial burden. After purchase, most stewards regulate the improvement and refinancing of shared equity homes to ensure that homeowners do not assume more debt than they can afford or pledge more equity than they own. Many stewards, CLTs in particular, also insist on being a party to every mortgage, requiring lenders to give the CLT three critical rights in the event of mortgage default: (1) the CLT is notified if the homeowner gets behind in her payments; (2) the CLT gets an opportunity to cure the default on the homeowner's behalf, forestalling foreclosure; and (3) the CLT gets the first shot at buying the

22. In the parlance of the National CLT Academy, where a number of courses have been developed for training practitioners in the organization and operation of shared equity housing, stewardship is deemed to have "three faces": preserving affordability, promoting sound maintenance, and protecting security of tenure. This threefold conception of stewardship was introduced in John Emmeus Davis, *Homes That Last: The Case for Counter-Cyclical Stewardship*, 30:4 SHELTERFORCE 18–25 (2008).

property out of foreclosure should the CLT be unsuccessful in helping the homeowner to retain her home. Protections like these are found throughout the sector. They have been demonstratively effective in enhancing the residential security of low-income homeowners, especially when real estate markets cool or collapse. Amid the recent financial crisis, they have been singularly successful in reducing foreclosures among shared equity homes to a fraction of the national foreclosure rate.[23]

A stewardship regime so extensive in the duties it is expected to perform is an indication of just how much the meaning of shared equity homeownership has changed in recent years. The equity that is shared is no longer defined solely by the facility of these models in splitting the proceeds when a home is resold. The models themselves are no longer distinguished solely by their reliability in preserving affordability. What they are and what they do has been recast to ensure the survival and success of the homeownership opportunities they have worked so hard to create.

Better Than Homes That Are Easily Lost

Overflowing the conceptual and operational boundaries that once described it, shared equity homeownership must be defined more expansively than before, both in the way the models making up this sector are structured and, equally important, in the way these models perform. The working definition I would propose is the following:

> *Shared equity homeownership is a generic term for various forms of resale-restricted, owner-occupied housing in which the rights, responsibilities, risks, and rewards of ownership are shared between an income-eligible household who buys the home for a below-market price and an organizational steward who protects the affordability, quality, and security of that home long after it is purchased.*

Implicit in this definition is a justification for shared equity homeownership that goes beyond the usual rationale for raising the profile and increasing the scale of this sector. It *is* a vehicle for preventing the community's wealth from being added to the private earnings of individual homeowners. It *is* a means for reallocating the economic gains that accrue to real property. It *is* a mechanism for preserving affordability across successive generations. But shared equity homeownership is more than that.

23. Evidence for lower rate of defaults and foreclosures among shared equity homes can be found in John Emmeus Davis & Alice Stokes, Lands in Trust, Homes That Last: A Performance Evaluation of the Champlain Housing Trust (Champlain Hous. Trust 2009), *available at* www.liquidosity.com/NCLT_arcv/doc_library/p246-Lands-In-Trust_Homes-That-Last.pdf; Emily Thaden, *Outperforming the Market: Making Sense of the Low Rates of Delinquencies and Foreclosures in Community Land Trusts* (Nat'l Cmty. Land Trust Network 2010), *available at* www.cltnetwork.org; Temkin, Theodos & Price, *supra* note 9, at 26–29.

And because it is more, it is better. Better than what? Better than putting precious dollars and precarious people into market-priced homes that are easily lost. Better than homeownership that regularly fails.

Most practitioners of shared equity housing are unaccustomed to making such bold claims for their favorite model. Instead of trumpeting its superiority, they are more likely to be found defending its equivalency, trying modestly to convince a skeptical public or resistant bureaucracy that their nonmarket approach to homeownership is "almost like" conventional homeownership, "almost as good" as market-rate tenures that promise homeowners a rich return on their investment. This is a curious thing. Shared equity homes are less likely to be lost than market-rate homes. Shared equity homeowners are more likely to succeed. Yet the conventional practice of boosting low-income people into market-rate homeownership is rarely subjected to the same scrutiny and skepticism that regularly greets any suggestion that public dollars might be more prudently spent on promoting alternative forms of owner-occupied housing. The notion that these alternative tenures might actually be better than market-rate homeownership is seldom voiced.

Nevertheless, it is becoming harder to ignore the many losses that accumulate year after year among the market-rate homes that low-income households have been helped to purchase through public largess.

Affordable prices are lost when the owners of publicly assisted, market-rate housing are allowed to resell their homes in a rising market for the highest possible price, pocketing 100 percent of the appreciation for themselves. The most egregious of these losses have occurred in cities and counties that have employed inclusionary zoning or some other regulatory incentive or mandate to create thousands of affordably priced homes without long-term controls over their resale. Most of this housing passes into the market within a single decade, earning equity windfalls for the first owners while fetching inflated prices that low- and moderate-income households cannot afford to pay.[24]

24. The best-documented example is Montgomery County, Maryland, which enacted one of the first inclusionary housing ordinances in 1973. Until 1981, the county's Moderately Priced Dwelling Unit (MPDU) program required affordability controls for owner-occupied units lasting only five years, a period that was increased to ten years in 1981. By 1999, the program had created 10,600 affordably priced units, both owner-occupied and renter-occupied, but affordability restrictions had lapsed on two-thirds of them. *See* Karen Destorel Brown, *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area* (Brookings Inst. Ctr. on Urban & Metro. Policy, Discussion Paper, 2001). In 2005, by which time thousands of affordably priced units had already been lost to the market, Montgomery County finally amended its ordinance to require thirty-year resale controls for owner-occupied homes created under its MPDU program. For any units resold within this time span, moreover, the clock is now restarted, initiating a new thirty-year period.

Public subsidies are lost when assisted homeowners are allowed to pocket all of the public's investment at resale. Even where a policy of subsidy recapture has replaced a policy of subsidy removal, the value of the public's investment can rapidly erode in a rising market.[25] At the other extreme, in a declining market, this investment can entirely disappear if assisted homes are forced into foreclosure.

Affordable payments are lost when homeowners are boosted into market-priced homes with adjustable-rate mortgages that rise with the market. In a booming economy, moreover, homeowners with adjustable-rate mortgages are not the only ones who see their housing costs climb. A hot market that pushes up real estate values can increase property taxes and insurance costs for all homeowners, many of whom may be unable to bear this added financial burden.[26]

Housing quality is lost when homeowners cannot afford to pay the ongoing cost of repairing their homes or replacing major systems like a roof, foundation, or aging furnace. This tends to happen most often among homeowners with lower incomes who buy homes that are older and in worse condition because that is all they can afford, only later to discover they do not have the means to pay for unexpected repairs.[27]

Homeownership is lost when lifelong renters are unprepared for the new responsibilities of owning a home or, should their circumstances change, the unexpected challenge of meeting financial obligations that can escalate rapidly beyond their means.

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25. The eroding value of recaptured subsidies in rising real estate markets is discussed in Helen Cohen, *Diminishing Returns: A Critical Look at Subsidy Recapture*, *in* The Affordable City: Toward a Third Sector Housing Policy 107–21 (John Emmeus Davis ed., 1994); Davis, *supra* note 2, at 80–85; Davis & Jacobus, *supra* note 15, at 7–8.

26. Another benefit of shared equity homeownership in some jurisdictions is reduced property taxes. The equitable taxation of resale-restricted homes does not exist everywhere, but there is wider recognition that a permanent cap on a property's resale price should result in a lower valuation. *See* Davis, *supra* note 2, at 85–88; Davis & Jacobus, *supra* note 15, at 23–27; *see also* Prowitz v. Ridgefield Park Vill., 568 A.2d 114 (N.J. Super. Ct. App. Div. 1989) ("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.").

27. One study of low- and moderate-income homeowners who had purchased market-priced homes with the assistance of a NeighborWorks affiliate reported that 56 percent of these new homeowners had encountered unexpected repairs, and 20 percent had been unable to make such repairs, even to roofs or foundations. Susan Saegert, Francine Justa & Gary Winkel, Successes of Homeowner Education and Emerging Challenges (CUNY Graduate Ctr. 2005), *available at* http://web.gc.cuny.edu/che/FinalReport2005.pdf.

Wealth is lost by homeowners and communities alike when home values collapse and foreclosures climb. Communities of color tend to be hit the hardest because subprime mortgages and predatory lending have been heavily concentrated in their neighborhoods.[28] Years of progress helping low-wealth households to gain access to real property and helping low-income communities to reverse the ravages of disinvestment can be wiped out virtually overnight in a wave of foreclosures like the one that began crashing through urban and suburban America after the housing bubble burst in 2006.

Such losses barely registered in our national consciousness until recently. The public was unaware; academics and policymakers were unconcerned. Few expressed much worry about the deadly rate of attrition in this market sector.[29] True, there were a growing number of public officials in hot real estate markets who fretted about the rising per-unit cost of subsidizing homeownership. There were others who lamented the leakage of affordably priced units created through municipal programs like inclusionary zoning. But the desirability of helping low-income households to attain market-rate homes went largely unchallenged, as it does today. Even amid the worst financial meltdown since the Great Depression, most commentators on the causes and remedies for the recent foreclosure crisis have focused on the laxities evident in the way these homes were financed.[30] Almost nothing has been said about the vulnerabilities inherent in the way these homes are owned. The system of financing homeownership has come under close scrutiny. The structure of tenure has not.

Part of the reason is money. Gaining access to an asset that appreciates in value has been extolled and encouraged as one of the surest paths out

28. *See* K.S. Gerardi & P.S. Willen, *Subprime Mortgages, Foreclosures, and Urban Neighborhoods* (Fed. Reserve Bank of Atlanta, Working Paper 2009–1, 2009); Raul Hinojosa Ojeda, Albert Jacquez & Paule Cruz Takash, *The End of the American Dream for Blacks and Latinos* (William C. Velasquez Inst. White Paper, June 2009), *available at* www.wcvi.org/data/pub/wcvi_whitepaper_housing_june2009.pdf.

29. Among academics, there were *some* who sounded an early and unpopular alarm about the risks of homeownership for lower-income families, including Apgar, *infra* note 33, and Shlay, *infra* note 36, cited later in this section. *See also* Dean Baker, Who's Dreaming: Homeownership Among Low Income Families (Ctr. for Econ. & Policy Research 2005); W. Goetzmann & M. Spiegel, *Policy Implications of Portfolio Choice*, *in* Low-Income Homeownership 257–74 (2002).

30. *See*, *e.g.*, Ojeda, Jacquez & Takash, *supra* note 28; Dan Immergluck, *The Foreclosure Crisis, Foreclosed Properties, and Federal Policy*, 75 J. Am. Plan. Ass'n 406–23 (2009). In a more recent article written for the Federal Reserve Bank of Atlanta, however, Immergluck has lamented the lack of tenure diversity in most American communities and praised the virtues of CLTs and other forms of shared equity homeownership. *See* Dan Immergluck, *Looking Beyond Foreclosure: What's Ahead in Residential Finance and Housing Markets?*, 20(1) Partners in Community & Econ. Dev. 3–7 (2010).

of poverty. Homeownership provides low-income families with more than a secure place to live. It dangles the golden promise of a low-risk opportunity to accumulate wealth, a gospel of prosperity that has been fervently preached by public officials and private lenders alike.

The hidden flaw in this wealth-building strategy is that many of the homes that low-income households can afford to buy on the open market are located in neighborhoods where real estate appreciation has been chronically low or nonexistent.[31] When low-income households have managed to buy homes in neighborhoods with a stronger record of appreciation, on the other hand, they have often done so using adjustable rate mortgages and other forms of creative financing. Their opportunity for greater wealth has been purchased at the expense of greater risk, exposing these households to financial loss should the market turn against them.

The bigger problem is that first-time homebuyers of modest means tend to fail at an alarming rate, even when using conventional mortgages. Within five years of purchasing a home, nearly half of all low-income homeowners fall back into renting.[32] *Failure* is maybe too strong a word for all of this slippage because some people simply come to realize that homeownership is not for them and make a prudent decision to return to tenancy. In many other cases, however, homeownership is wrenched from the hands of low-income households with catastrophic results for both the families who lose their homes and the neighborhoods in which these homes are located. In the prescient words of William Apgar, writing several years before the current foreclosure crisis:

> 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.

31. *See* S. Kim, *Race and Home Price Appreciation in Urban Neighborhoods: Evidence from Milwaukee, Wisconsin*, 28 Rev. Black Pol. Econ. 9–30 (2000); T. Parcel, *Wealth Accumulation of Black Men and White Men: The Case of Housing Equity*, 30 Soc. Probs. 471–89 (1982).

32. *See* Carolina Katz Reid, *Achieving the American Dream? A Longitudinal Analysis of the Homeowner Experiences of Low-Income Households* (Ctr. for Soc. Dev., Working Paper 05-02, 2005); Thomas P. Boehm & Alan M. Schlottman, Wealth Accumulation and Homeownership: Evidence for Low-Income Households 33 (HUD 2004); C.E. Herbert & E.S. Belsky, *The Homeownership Experience of Low-Income and Minority Households: A Review and Synthesis of the Literature*, 10(2) Cityscape (2008). Reid discovered that only 47 percent of the first-time, low-income homeowners in her longitudinal study were still homeowners five years after buying a market-rate home. Boehm and Schlottman reported "a high likelihood that lower income families will slip back into renting after attaining homeownership." Herbert and Belsky placed the five-year success rate at 50 percent. The data used in all three of these studies were collected *before* the national foreclosure rate began to climb.

> 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.[33]

It is not only low-income families that have been "unable to properly assess the risks and responsibilities of homeownership." So have most policy makers. They have been slow to acknowledge the fragility of the homeownership opportunities that governmental resources have made possible. They have been even slower to act in stemming the tide of post-purchase losses that permeate their programs, especially when real estate markets are very hot or very cold.[34] Public dollars, public powers, and creative financing from private lenders continue to be lavished on lifting low-income households across the threshold of ownership with little regard for the long-term fate of hard-earned subsidies, hard-won affordability, and newly minted homeowners on the other side. Attainability is all. Sustainability is outside the parameters and beyond the horizon of the program's design. Or, in the words of the space age ditty from yesteryear, lampooning the similar myopia of an earlier generation of technocrats: "Once the rockets are up, who cares where they come down? That's not my department, says Wernher von Braun."[35]

That *is* the "department" of shared equity homeownership. Sustainability is what these nonmarket models do best. For them, it is not enough for low-income families to attain homeownership. They must be able to handle the responsibilities that come with it. They must be able to maintain and retain the homes that are theirs. "Housing policy should not increase risks for families already at risk of a host of problems," warns Anne Shlay. "[I]t should work at eliminating them or at least minimizing their probability of occurring."[36] In short, it should work at helping low-income homeowners

33. William Apgar, *Rethinking Rental Housing: Expanding the Ability of Rental Housing to Serve as a Pathway to Economic and Social Opportunity* 46 (Harv. Joint Ctr. for Housing Stud., Working Paper Series, W04-11, 2004).

34. I have argued elsewhere that the fatal flaw in most homeownership policies and programs is their disregard of the business cycle. They are designed for a mythical economy whose weather is always sunny, ignoring the economic storms that endanger low-cost homes and low-income homeowners at the top and bottom of the business cycle. The corrective provided by shared equity homeownership is what I have called "counter-cyclical stewardship," a set of protections that shield these homes and homeowners from an economy more prone to fluctuation than stability. *See* Davis, *supra* note 22, at 18–25.

35. Tom Lehrer, Wernher Von Braun (1965). Originally written for the NBC television show, *That Was the Week That Was*, the song was later performed by Lehrer on his 1965 LP, *That Was the Year That Was*.

36. Anne B. Shlay, *Low-Income Homeownership: American Dream or Delusion?* 43 Urb. Stud. 524 (2006).

to succeed, allowing them to hang onto assets that governmental largess has delivered into their hands.

Attainability sets the bar of public policy much too low. Sustainability aims higher, a lofty aspiration that suffuses every aspect of shared equity housing. Sustainability is woven into the purpose, structure, and operation of shared equity homeownership. It is why the rights, responsibilities, risks, and rewards of ownership are shared. It is why a stewardship regime is put in place: enhancing the chances that affordability, quality, and security will dependably endure; improving the odds that whoever purchases this housing will actually succeed.

Shared equity homeownership is not loss-proof. Regardless of a steward's best efforts, there will be times when a few resale-restricted homes leak out of the system and return to the open market. There will always be homeowners who fail to make necessary repairs or to replace antiquated systems, even with the steward's help. There will always be homeowners who cannot be saved from foreclosure. It is not humanly possible to prevent every failure.

What *can* be done—what shared equity housing is designed to do—is to make failure less frequent, cutting the losses that market-oriented programs calmly accept as a normal cost of doing business when serving people too poor to become homeowners on their own. When failure does occur, as occasionally but inevitably it must, shared equity housing is also designed to make it less catastrophic.[37]

Engineers would describe such a system as having the capacity for graceful failure. Engineers do not set for themselves the impossible goal of designing a building, an electrical grid, or a computer program that will never fail. They strive, instead, to design systems that are robust and resilient. Such a system fails only in extreme conditions and then fails gracefully. It bends or cracks but does not shatter. It flickers but does not crash. It may even collapse, but with enough warning and backup to protect its most valuable components.

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37. Although my focus here is on the effectiveness of shared equity homeownership in minimizing losses and managing failures within its own sector, it should be noted that CLTs, LECs, and deed-restricted houses and condominiums are also being used to cope with losses and failures occurring in the market sector. In New York City, for example, the number of LECs has expanded whenever the real estate market has crashed. Many market-priced rental properties neglected to the point of dereliction by absentee owners, taken by the city for taxes, or taken by banks in foreclosure have been converted into resident-owned LECs. In the current wave of foreclosures, federal funding provided through the Neighborhood Stabilization Program is allowing CLTs and other shared equity housing programs in Duluth, Minnesota; Burlington, Vermont; Oakland, California; Nashville, Tennessee; and several other cities to salvage hundreds of units of foreclosed owner-occupied housing. *See* Jeff Corey, *A Model for All Markets?* 31(3–4) SHELTERFORCE 50–53 (2010).

The programmatic design of shared equity homeownership aims for sustainability, but allows for graceful failure. Even when the affordability of shared equity homes is eroded, as sometimes happens at the top of the business cycle if a resale formula has failed to anticipate how fast and wide the gap can grow between housing prices and household incomes, these resale-restricted homes still remain more affordable than their market-rate counterparts. Even when the maintenance of shared equity homes is deferred, as sometimes happens at the bottom of the business cycle when lower wages or lost jobs make it difficult for homeowners to complete costly repairs, a steward is there to restore the quality of these homes before they are conveyed to another buyer. Even when the owners of shared equity homes get behind in their mortgages, as can happen at any time for reasons of health, divorce, or unemployment, the steward is there to arrest the slide toward foreclosure. Should foreclosure occur in spite of the steward's intervention, moreover, there is usually a backup plan for stopping the property's plunge into the market and for returning it to the steward's portfolio of price-restricted housing.[38]

Shared equity homeownership anticipates dangers that rain down the hardest upon the most affordable homes and the most vulnerable homeowners. It then raises a protective umbrella over both, endowing this sector with a resiliency that is missing from the market-priced homes that low-income households usually buy. Shared equity homes are designed to last. They are not as good as homes that are easily lost; they are better.

38. To cite one example, the Champlain Housing Trust (CHT), a CLT in Burlington, Vermont, has had nine foreclosures during its twenty-five-year history while boosting 629 low-income households into homeownership. No homes have ever been removed from its portfolio of price-restricted housing because of foreclosure. In every case, CHT has been able to reacquire the foreclosed property and reinstate long-term controls over its use and resale. *See* DAVIS & STOKES, *supra* note 23.