

CHAPTER 8

Social Housing

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Community development has emerged as a field in part because of the demonstrable inability of the mainstream, for-profit housing sector to provide decent, truly affordable housing for low-income people. To redress this inability, a large and increasing share of housing must be treated as a social resource rather than as a commodity yielding private windfalls. Since all housing contains both social and individual rights and interests, differing only in the nature and extent of their social characteristics, it is thus appropriate and useful to conceptualize a continuum of housing ownership forms. As discussed in this chapter, "social ownership" encompasses that portion of the spectrum where the overriding social interest is to ensure security of tenure and permanent affordability.

Social ownership of housing and land may be traced back to neolithic villages and Native American cultures. Within the capitalist era, various alternatives to the commodification of material life were put forth during the 19th century, and many European countries have accepted the notions of social ownership earlier and have gone much farther toward their realization than has the United States (see Harloe, 1995; Stone, 2003). Even in the United States, significant strands of nonspeculative and social ownership have emerged, despite the ideological domination and political force of the purveyors of unfettered private ownership. They amount to a little over four million housing units, about 4% of all housing in this country. Their accomplishments and potential provide encouragement and hope, while their limitations and con-

traditions provide lessons on the dilemmas of partial and piecemeal reform.

The chapter begins with a definition of social ownership. The bulk of the chapter then examines the nature and scope of existing models of social ownership, grouped into two major categories: socially owned rental housing, consisting of public housing, nonprofit rental housing, and mutual housing associations; and nonspeculative homeownership, consisting of limited-equity cooperatives, ownership with community land trusts, and some resale-restricted individual ownership. The models are evaluated in terms of differences in the degree of social control. The chapter concludes with identification of various routes through which the amount of social housing can be increased.

THE CONCEPT OF SOCIAL OWNERSHIP

Housing is defined here as socially *owned* if it meets all of the following criteria:

- it is not owned and operated for profit;
- it cannot be sold for speculative gain; and
- it provides security of tenure for residents.

Social ownership embraces the notion that housing should be permanently removed from the possibility of resale in the speculative private market. This means that once the original cost of producing or acquiring the housing is paid off, the only costs would be for operations and any additions,

alterations, and capital improvements. Even if nothing else were to change, the substantial expansion of such a "social sector" of housing would, over time, mean a sizable reduction in the housing costs for a growing proportion of the population. It would also mean slowing and eventually reducing the growth of mortgage debt as the mortgages on existing housing are paid off once and for all.

There are many different forms that "social housing" can take, including:

- ownership by public agencies, such as local and regional housing authorities;
- ownership by private nonprofit organizations; and
- ownership by residents themselves, individually or collectively, with resale restrictions that permit, at most, a "limited-equity" return on investment.

The unifying concept is not the particular type of entity owning the housing but the existence of enforceable provisions preventing the housing from being sold in the speculative private market. Indeed, for housing to be fully social, these provisions should apply "permanently," "forever," or "in perpetuity."

SOCIAL RENTAL HOUSING

Public Housing

Public housing is by far the most extensive and most maligned form of social ownership in this country. As of 2001, local housing authorities owned two million housing units (U.S. Census Bureau and HUD, 2002, Table 1A-7), about 2% of all housing: 1.3 million of these under the federal program (U.S. Department of Housing and Urban Development, 2000)—a reduction of about 100,000 from the early 1990s (Dolbeare, 1991)—the remaining 700,000 under various state and local programs. In addition, the Department of Defense owns and operates about 400,000 family housing units, the "other public housing program" (Hartman and Drayer, 1990; Twiss and

Martin, 1999). Given the focus of this book is on community development, only a few points will be made about public housing. First, the real estate industry from the outset attacked public housing ideologically and constrained it operationally through restrictions on design, location, and management as well as funding, making virtually inevitable the well-publicized problems with some public housing (Bratt, 1986). Second, despite these problems and the too-successful attempts to discredit the concept of public housing (and social enterprise generally), more complete and balanced examinations reveal that for the most part public housing has had a remarkable record of success in providing physically decent, non-speculative, mortgage-free, and cost-effective housing to poor people (Bratt, 1986, 1989).

Third, public housing remains a vital resource despite its checkered history and reputation (Fuerst, 2000). Many housing authorities have more people on their waiting lists than are currently living in their developments. Some have closed their waiting lists because the wait is as long as 20 years. Fourth, while giving priority for public housing to the most needy households is quite appropriate in a society where low-cost housing is scarce and housing is not a right, the deepening concentration of the poorest households in public housing added fuel to attacks on the very idea of public housing, blaming public ownership and management (and/or the residents themselves) for the poverty of the residents.

Fifth, in some cities, large public housing developments are situated in areas where, in recent decades, urban redevelopment and gentrification have raised land values, making the sites ostensibly too valuable for poor people. Thus, since the 1980s, there have been increasingly strong forces working to reduce the amount of public housing, through density reduction in existing projects, wholesale demolition, sale to private developers, and conversion to mixed-income (including market-rate) housing. The prevailing public housing policy of the 1990s and into the new millennium—known as HOPE VI—largely embodies the principles of public housing

replacement, with substantial displacement and loss of units even where local housing authorities retain ownership (Pitcoff, 1999; Vale, 1999; Keating, 2000; National Housing Law Project et al., 2002).

While prevailing current sentiment gives little encouragement, public housing is an essential ingredient in addressing the housing crisis, in part because it is unequivocally outside the speculative market and also because it includes an established, operational infrastructure for producing, financing, and managing housing, including the power of eminent domain.

Nonprofit Rental Housing

Unfortunately, there are few precise figures on how many housing units are under ownership by private nonprofits, due to the ambiguity of definitions, overlap of categories, and lack of any entity (public or private) that has been given or assumed responsibility for compiling and disseminating such information. Nonetheless, I estimate that as of the early 21st century, there are about 1.3 to 1.7 million rental units in nonprofit ownership. This consists of about 1.1 to 1.3 million subsidized rental units, plus roughly 200,000 to 400,000 other rental units in nonprofit ownership that have received no government subsidies or possibly just capital assistance from nonfederal public or private sources.¹ This is a significant number, but it is just slightly over one-half the number of units owned by local public housing authorities, and about 1.5% of all housing units in the United States.

In the late 19th century, moral righteousness and enlightened self-interest on the part of some capitalists stimulated a modest move toward "philanthropic housing." Nonprofit projects were developed in a number of cities in the early part of the 20th century, totaling several thousand units (Abrams, 1946, p. 170ff). By eliminating development and rental profits, the housing was slightly less expensive initially than speculative new housing. But with construction costs to be paid off from rents, the units were still more expensive than the tenements occupied by poor and working-class people,

so the residents were mostly of middle income. Had these developments remained out of the speculative market, by today, they might be debt-free social housing and hence much less expensive than speculatively owned apartments of the same vintage or newer. However, most were eventually sold. As Charles Abrams aptly put it (1946, p. 175), "Philanthropy could no more solve the problem of housing than it could solve the problem of poverty."

In the modern era, private nonprofit housing has evolved and expanded through several phases, in which the lessons of this historical experiment have been learned gradually and unevenly but sufficiently to hold the promise of an increasingly important role in the growth of the social sector of housing.

The most clearly identifiable and longest-lived component of modern nonprofit ownership consists of federally financed and subsidized Section 202 housing for the elderly and handicapped, a program created in 1959 as the first of a series of subsidized housing production programs for private development and ownership. Unlike all subsequent programs, though, 202 has from the outset been restricted to development and ownership by nonprofit (and public) entities. The result has been the emergence over the past four decades of a set of organizations specializing in such housing, although some regional and community-based nonprofits have included 202s among their broader housing repertoire.

Section 202 housing was financed through below-market direct federal loans until changed to capital grant financing by the Housing Act of 1990. Projects built since 1974 also receive Section 8 rental subsidies. In addition, an owner may not sell the housing into the speculative market, at least during the 40-year term of federal financing and regulation. And even in the rare instances of foreclosure, Section 202 projects have been transferred to other nonprofit owners. These features, together with the capital grant financing and supportive services provided by the 1990 Housing Act, make the 202 program a premier model of privately owned nonspeculative housing.

As of the late 1990s, there were about 200,000 units of Section 202 housing (U.S. HUD, 2000).

Unfortunately, there does not exist a well-established model of nonelderly housing that embodies all of the attractive features of 202 housing. During the 1960s and early 1970s, socially motivated nonprofit developers did produce nearly 200,000 housing units under the FHA Section 221(d)(3) and 236 interest-reduction programs that had been created primarily for profit-making developers. (Nonprofit production comprised over one-fourth of the total under these programs [Clay, 1987, p. 9].) However, many ended up defaulting on their mortgages (as did many profit-motivated owners). The housing was taken over or resold by HUD, in some cases to speculative owners, so this experience does not offer the encouragement provided by the Section 202 program. Also, apart from weaknesses in the federal programs themselves, nonprofit owners had to contend with inadequate resources, lack of experience, an unsympathetic HUD, and the challenges of trying to serve and empower some of the neediest populations and communities (Bratt, 1989, pp. 185–191). Nonetheless, approximately three-fourths of these units remain in some form of nonprofit ownership.²

Beginning in the late 1960s, another type of nonprofit housing model was emerging, one that has proven much more successful at producing and operating housing under the government subsidy programs. However, in order to be successful, these housing providers have had to buy into many of the rules of profit-making development and stretched the meaning of nonprofit ownership. Community development corporations, regional housing development corporations, and “intermediaries” providing technical assistance have been set up, with staffs that attempt to combine training and experience in business and finance with social concern. While these entities are themselves nonprofit corporations, and their housing commitment almost always is to permanent nonspeculative ownership, in order to benefit from the financial incentives

provided through the Internal Revenue Code (notably the Low Income Housing Tax Credit), they have to enter into partnerships with profit-motivated investors.

When a nonprofit organization needs to market its housing plans to potential investors and also meet the underwriting criteria of mortgage lenders to obtain financing, the needs of prospective residents may at times have to be compromised. Once the housing is occupied, in order to maintain investor confidence in the development and the organization, the housing may need to be managed quite conservatively in terms of tenants’ rights and rent levels. Even though these tensions may be mitigated with deep, income-determined subsidies, a nonprofit owner can face disturbing role conflicts between its obligations to the residents and the investors. Furthermore, because the tax benefits are of finite duration (typically 15 to 20 years, depending upon the type of tax benefit), down the road the investors will want to bail out when they no longer have any financial incentives. Unless the deal has been structured so that they can fully recover their initial investments as well as their profits from the tax shelters, the investors will expect to be bought out at this point—necessitating sale of the housing to owners who might turn it into market-rate housing, unless financing is available for the nonprofit or the residents themselves to buy out the investors.

In sum, the current prevailing model of nonprofit development and ownership might more properly be understood to be “quasi-nonprofit” or even “compromised nonprofit” ownership. Only if social financing replaces dependence on profit-motivated investors can the growing number of these community-based and regional nonprofit housing providers have a viable alternative to partnerships with profit-motivated investors and thus be able to achieve true social ownership.

MUTUAL HOUSING ASSOCIATIONS

There is one other, more fully social model of nonprofit ownership—the mutual housing

association (MHA)—that began in Europe over a century ago but has only emerged in the United States over the past two decades (Goetze, 1987; Bratt, 1990). One version, the federated MHA, consists of a group of resident-controlled limited-equity co-ops (see below) or nonprofit developments (Krinsky and Hovde, 1996, p. 10). The other version, referred to as an integrated MHA, has been promoted since the late 1970s by the Neighborhood Reinvestment Corporation (NRC) and differs from other models of social ownership in several significant respects.

First, the NRC mutual housing approach has deliberately eschewed outside profit-seeking investors in order to avoid role conflict and possible pressure to sell the housing when the tax shelters run out. Second, NRC MHAs try to finance nearly all acquisition and development costs through upfront capital grants, although often they have had to use some debt due to limited availability of grant resources. Third, residents are expected to make a modest initial capital contribution (often waived for low-income people), which is recoverable with interest upon moving out but cannot otherwise grow and is not a marketable property interest; the goal is for residents to put up 5% of the total cost, with capital grants covering the rest. Fourth, a portion of each resident's monthly charges is supposed to go into a fund that will provide part of the capital grants for additional units, although generally only middle- to high-income residents pay high enough monthly charges to contribute to the capital fund. Fifth, the membership of each NRC mutual housing association consists of residents, prospective residents, and local public and community officials. A majority of the governing board consists of residents and prospective residents, so the housing is largely owned and controlled collectively by residents. Sixth, organizational development is emphasized as much as the physical development of the housing, with residents required to participate and expected to take care of minor maintenance of their units, even though professional management is an integral part of the model. Finally, residents have lifetime

security of tenure, as long as they meet their financial and other membership obligations and do not violate the rights of others. They may designate a family or household member as the successor to their unit but may not sublet; this ensures that every resident is an association member who is expected to participate in the organization.

Because of the experimental nature of this mutual housing model and because it has attempted to operate outside prevailing government programs and financing mechanisms, it has grown slowly and remains limited in scale despite early interest and enthusiasm. As of late 2002, there were only 11 NRC mutual housing associations that together owned about 8,300 occupied units (NeighborWorks Network, 2003). Nonetheless, an encouraging analysis found that MHAs would be more cost-effective to the federal government than nearly any other approach in assisting very low-income households on a long-term basis (Bratt, 1990). Thus, despite its extremely small scale so far, there are compelling economic as well as social advantages to the mutual housing model. It is an emerging approach that comes quite close to realizing many of the goals set out here for true social housing.

RESIDENT SECURITY, POWER, AND CONTROL IN SOCIALLY OWNED RENTAL HOUSING

People who reside in housing owned by public agencies, nonprofit organizations, and integrated MHAs are legally tenants. Some people regard this as a fundamental weakness of these forms of ownership, as residents ostensibly have no opportunity to realize any of the psychological, social, and economic benefits of homeownership. It is important, though, to challenge the notion of a sharp binary polarity between rental and ownership.

Even in the private housing market, neither tenancy nor homeownership is a unitary concept. An alternative form of tenure under social ownership, in combination with no debt costs, can yield resident

benefits that are competitive with conventional homeownership. Of greater subtlety and more immediate relevance, though, concepts of residential property have been undergoing considerable evolution so that the diverse forms of ownership, as well as their combinations and modifications in practice, have produced virtually a continuum on the dimensions of security of tenure, resident control, and economic benefits.

For example, even in private rental housing the history of tenant organizing, legislation, and litigation reveals that there are significant objective differences among tenancy-at-will, lease tenancy, tenancy with formal resident organization and collective bargaining, and tenancy with statutory and regulatory controls on conditions, evictions, and rents.

Within existing subsidized rental housing, the history of public housing certainly demonstrates how low-income residents can be disenfranchised, abused, and degraded almost as much by public as by private landlords. Yet in public housing organizing and advocacy led to legislative and administrative redefinition of the scope of residents' power and rights and the meaning of public ownership, even if some of these rights have been undermined since the late 1980s. Public owners have enforceable legal, constitutional, and financial obligations to residents greater than can be imposed on private owners. Thus, resident ownership is not necessarily the only or best route to greater power, security, and control.

For tenants in private nonprofit housing and MHAs, the legal leverage and claims on public resources are, of course, less than for public housing residents. However, the organizational circumstances are usually quite different as well. Certainly, some of the socially oriented nonprofits that developed subsidized housing in the 1960s and 1970s lacked the financial capacity and organizational ability to sustain their social commitment to their tenants.

In contrast with many of the early nonprofits, some community development corporations and all MHAs have explicitly involved residents in decision-making and, in some cases, management and operation

of the housing as an integral part of the philosophy of the organizations. In such situations, there is not only objective resident power and security of tenure but also a considerable sense of "ownership" in the psychological sense even if in formal legal terms the residents are tenants. In addition, while residents do not build up any wealth through their housing, resident-savers can on average do as well financially as conventional owners depending upon the financing and cost structure of the housing.

Furthermore, residents of participatory nonprofit rental housing can in principle have as much autonomy to fix up and change their units as do residents of physically equivalent limited-equity co-ops or condominiums. Finally, what must be weighed against some formal differences in legal status between participatory social rental and nonspeculative homeownership are differences in financial risk. In the contemporary situation of ownership by a community development corporation, MHA, or regional nonprofit housing corporation, the ownership entity transcends not only the individual unit but also the particular building or development and usually is connected to an infrastructure of intermediaries that have provided financial and technical assistance. This means that the residents, most of whom are low-income people, do not have to carry fully by themselves the cost burdens of unanticipated housing problems or changes in their own economic circumstances or of their fellow residents, in contrast with individual private ownership.

Along most dimensions, being a tenant in socially owned rental housing is not necessarily inferior to being a nonspeculative homeowner—or speculative owner. It may have real advantages and attractions not only for those of low or moderate income but for many with higher income as well.

NONSPECULATIVE HOMEOWNERSHIP

Limited-Equity Cooperatives

As of 2003, there were approximately 1.2 million housing units under cooperative

ownership in the United States. About 425,000 of these are limited-equity or zero-equity co-ops, of which over one-half are in New York. The remaining 765,000 are market-rate cooperatives (National Association of Housing Cooperatives [NAHC], 2003). The latter group includes 550,000 conversions from rental housing, mostly in New York City, similar to condo conversions in other parts of the country. The other 215,000 market-rate co-ops are mostly middle-income developments that originally had resale restrictions but in most cases now permit members to sell their shares at the market price.

During the 19th century, programs for cooperative ownership of workplaces and residences were integral parts of the utopian and revolutionary critiques of capitalism in the United States as well as in Europe. However, the earliest U.S. co-ops (in New York between 1876 and 1885) did not embody this radical vision but were instead a form of homeownership for high-income urbanites, presaging modern luxury co-ops and condos (Siegler and Levy, 1987, p. 14).

It was not until the 20th century that the first nonspeculative, socially oriented co-op housing was developed. Most of these were in New York City and under union auspices. In the early part of the century, several workers' housing cooperatives were developed (Abrams, 1946, p. 181; Siegler and Levy, 1987, p. 14), but most did not last. In the late 1920s, New York State passed a limited-dividend housing law that, among other things, facilitated co-ops for moderate- to middle-income people (Siegler and Levy, 1987, p. 14). One of the first was the Workers Cooperative Colony in the Bronx developed by the Amalgamated Clothing Workers. With the first units completed in 1928, it grew eventually to 1,400 units and still remains a co-op. However, despite state tax exemptions, the co-ops developed by labor groups in New York were affordable only to higher-paid workers. During the 1930s, depression conditions led to increased national interest in co-ops, but postwar era ideological and economic conditions shunted co-ops to the margin of housing policy (Leavitt, 1995).

While these early housing cooperatives were structured to assure continued affordability to members of the affinity group, there is nothing intrinsically nonspeculative about cooperative ownership. In any co-op, the housing is owned by a corporation made up of "cooperators," with each share in the corporation corresponding to either a particular dwelling unit or a proportion of the square footage of the entire building. Unless explicitly defined otherwise, a share is a marketable commodity that may be sold for whatever the owner can get. In addition, unless the co-op agreement requires the owner of shares to be a resident of the unit, an owner may sublet the unit and charge whatever the market will bear.

Within this framework, the distinctly limited-equity form of co-op emerged as a housing strategy for helping to maintain long-term affordability and resident control for people of moderate if not low income. In a limited-equity co-op, the share price is set by formula, not by the market, in order to restrict or eliminate any speculative gain. The co-op corporation retains a first-option right to purchase a departing member's share at the formula price. In addition, occupancy and share ownership are generally coterminous—apart perhaps from approved temporary subletting—in order to prevent "landlordism" and to ensure that residents are people who have a legal and financial stake in the housing.

Interestingly, the growth of interest in the limited-equity co-op model over the past two decades does not simply hark back to the early co-ops. It also rests upon a substantial but little known historical foundation of several hundred thousand co-op units developed in the three decades prior to 1980. The great majority of these were unsubsidized, middle-income cooperatives, with federal or state government mortgage insurance or financing. In addition, an entire infrastructure evolved to undertake development and provide technical assistance, services, and training for co-op housing (Siegler and Levy, 1987, pp. 16–19; NAHC, 1990). Indeed, after World War II, some progressive housers advocated a large-scale co-op program as part of urban

redevelopment, to complement public housing for households who could not qualify for the latter and as a model for eventual conversion of public housing to resident control (Abrams, 1946, pp. 179-187). However, as indicated above, from the mid 1950s until the mid 1960s, interest in co-ops by middle-income households waned in the face of "anti-collectivist" ideology and the suburban triumph.

In the late 1960s and the 1970s, several factors led to renewed interest in nonspeculative housing cooperatives, within a rather different political and economic context. The emphasis on community control and resident empowerment in the federal antipoverty program contributed to the eligibility of co-ops for federal housing subsidies. About 60,000 co-op units were created under the HUD Section 221 and 236 programs between the mid 1960s and mid 1970s (NAHC, 1990). Also, the emergence of the modern women's movement rekindled interest in co-ops—integrally connected with supportive services, as in the 19th century feminist notions—as a residential model especially well suited to the needs of single women (young and elderly) and women as single parents (Hayden, 1984; Novac and Wekerle, 1995).

In addition, wholesale disinvestment and abandonment of vast amounts of housing in major cities across the country led to some spontaneous, grassroots building takeovers of unoccupied buildings and resident operation of occupied buildings. Especially in New York City, where effective title of many thousands of buildings passed to the city, the movement demanded not only rehabilitation but also title to the buildings as limited-equity co-ops (Leavitt and Saegert, 1990). However, since the late 1970s, the limited-equity co-op movement has been impelled rather less by the housing needs of the very poor than by declining opportunities for conventional (or even condominium) homeownership among moderate- to middle-income people. Over this period, about 150,000 additional limited-equity co-op units have been developed, with more than one-half of these being in New York City (NAHC, 2003).

Ironically, the ideal of resident control in a limited-equity co-op includes the risk that the residents may at some point reorganize as a market co-op. Because cooperatives are legally autonomous corporations, this possibility is real and has been occurring. Only if the co-op incorporation documents preclude such dissolution, or if there is an entity that has some legal leverage and a broader public interest, can this risk be avoided. Where there is public involvement—through, say, mortgage insurance, publicly donated land, or public grants, loans, or subsidies—then contractual requirements or deed restrictions can protect the limited-equity requirement indefinitely. The strongest legal protection of permanency, though, is through ownership of the land by a government agency or broadly based community land trust (described in the next section). Under such an arrangement, the co-op corporation owns the structures but leases the land, with the ground lease stipulating retention of the co-op's limited-equity character.

Nonspeculative co-op units have been created through both new construction and building conversions. Most have involved multifamily structures, but some, such as the Route 2 Co-op in Los Angeles, include one-family houses. While income mixes vary, including some low-income and some higher-income people, the middle range prevails. Although some public programs and public funds in the form of land, loans, and grants have often assisted, financing has generally come from quasi-public mortgage lenders (such as state housing finance agencies and the National Cooperative Bank) that offer terms slightly below market. Each co-op has tended to be unique, not only in the circumstances that led to its creation but also in the resident mix, the financing sources and terms, and the limited-equity formula (Heskin and Leavitt, 1995). While this uniqueness reflects an encouraging creativity and resourcefulness, it also makes more difficult policies that could facilitate more rapid expansion of the model.

Ownership with Community Land Trusts

While the origins of most of the other models of nonspeculative ownership are

primarily urban, the community land trust (CLT) has rural roots. These traditions include Native American concepts as well as several 19th century movements, most notably utopian socialist experiments in common ownership; Henry George's notions of land as the principal locus of unearned wealth and social exploitation; and aristocratic support for nongovernmental nature preserves and parks.

Yet, despite its roots, the land trust movement that began in the 1960s and has been growing at an accelerating rate since the late 1970s does not seek to restore a vanished past or opt out of modern society. It operates within, while seeking to transform, contemporary real estate law. It is concerned with the active productive uses of land, including but not limited to residential use, in opposition to speculative holding and use of land. It is, in this sense, concerned with issues of responsible and active land use and planning, rather than preservation per se and resistance to development. And it seeks to use land tenure as the organizing locus for the expansion and realization of democratic decision-making (Institute for Community Economics [ICE], 1982; Davis, 1984; Krinsky and Hovde, 1996).

The model vests title to the land itself in a nonprofit community organization—the land trust—to be held in nonspeculative ownership in perpetuity. Individuals are granted the right to use the land for their own benefit and with considerable individual autonomy. The formal legal link between the trust that owns the land and the people or organizations who use it is the ground lease, which grants lifetime or 99-year tenure (inheritable and renewable), subject to certain conditions. Thus, as it relates to housing, the form of ownership of the buildings may be anywhere on the ownership spectrum depending upon the terms of the ground lease under which the housing owners are allowed to use the land. In principle, the house owner could be a landlord renting the dwelling for whatever the market rent might be or a homeowner free to sell the house at the market price (exclusive of land). In practice, the land trust movement has been committed primarily to

“permanently affordable homeownership” (Davis and Demetrowitz, 2003), using the ground lease terms to enhance affordability, security of tenure, resident ownership, and nonspeculative transfer of houses in perpetuity. The actual form and conditions of ownership of the dwellings depend on the local context and individual circumstances.

Community land trusts acquire land by donation if possible, but often by purchase. Therefore, their immediate impact on the cost of housing depends upon their ability to obtain land at less than market prices, gain access to below-market financing for land acquisition that may include development as well, and subsidize residents through resources the CLT receives as a charitable organization. Over the long term, housing costs are reduced primarily by preventing resale of the land and controlling the price at which the residential structures may be resold. As with other forms of nonspeculative ownership, deep affordability remains constrained by continued dependence on debt financing and by residents' incomes.

The ways in which the community land trust approach distinguishes itself are, first, the dual ownership structure, which explicitly accepts individual property rights while establishing and protecting social or community rights. On the one side, the private ownership of one's dwelling, opportunity to accumulate some wealth through homeownership, and unrestricted right to pass the home to one's heirs enhance the appeal of the model by building on deeply rooted ideological traditions. On the other side, broad-based land trusteeship is intended to provide a legal and social framework for maintaining nonspeculative ownership forever. The goal is to strengthen established—though weaker—traditions of community, in ways that skirt popular skepticism about government. The second distinctive feature is the broader community development and land reform agenda, which, it is argued, can facilitate economic development and community empowerment and hence begin to address the income side of the affordability issue and aspects of the quality of life beyond just housing itself

(ICE, 1982, Chapter 2; Davis, 1984, pp. 219-222; White and Matthei, 1987, pp. 47-64; Krinsky and Hovde, 1996).

However, just as each of the other social housing models faces certain fairly distinctive constraints, so does the CLT approach. First, because a CLT allows a leaseholder to own the buildings on the land, imposing a limited-equity and first-option resale restriction on building owners may lead to legal challenges as "restraints on alienation" (Davis, 1984, p. 223), although apparently this concern has been overcome (ICE, 2001).

Second, because the supply of land that can be acquired through donation or below-market purchase will always be small, and the ability of CLTs to purchase substantial amounts of private land at market prices will always be limited, only a broader and more radical land reform agenda will enable the CLT movement to alter significantly the effects of land speculation on housing costs.

Given the grandness of the vision, the recent emergence of the model and the lack of public programs and resources specifically for land acquisition, it is not surprising that the land trust movement is still modest in scale. Between the late 1960s and the mid 1980s, the number of community land trusts grew slowly, with some losses along the way; in 1985, there were fewer than 20. Since 1985, though, the growth has been substantial, reaching almost 50 in 1991 and 133 in operation or development by 2001 (ICE, 2002). This upsurge has emerged directly out of the housing affordability crisis, as land trusts increasingly have been created in cities and towns, with "forever" housing as their primary focus. Although CLTs have been established in all parts of the United States, about one-half are in New England, which has experienced some of the most severe affordability problems and where grassroots organizing—both rural and urban—has long been a way of life.

In the entire country, there were only about 6,000 housing units on CLT-owned land as of the end of 2001 (ICE, 2002). Nonspeculative housing under the CLT model is thus comparable in scale to MHAs and orders of magnitude less than public,

nonprofit rental, and limited-equity co-op housing. Nonetheless, again analogous to MHAs, the land trust emphasis on organizational development, participation, and personal growth, along with the creation of permanently affordable homeownership housing, will undoubtedly make the model increasingly popular.

Resale-Restricted Individual Ownership

Since the 1980s, the principal response to declining opportunities for conventional homeownership has not, in fact, been promotion of social ownership programs but those public (and some private) programs to assist first-time homebuyers with mortgage financing at interest rates somewhat below market, "soft" second mortgages (i.e., deferred repayment), reduced or waived closing costs, and proposals for tax-exempt or tax-deferred saving for downpayments. In addition, many localities have provided publicly owned land at little or no cost and offered below-market construction financing and even some partial capital grants to stimulate construction of below-market housing for homeownership. Because the participating homebuyer is able to obtain a house with below-market financing, possibly at a below-market price, most programs impose some resale restrictions in order to lessen the potential for owners to reap windfalls when they sell in the speculative market.

In most instances, however, the provisions are so weak that the housing may not be characterized as nonspeculative even for the initial owner, and generally the housing is fully in the speculative market with the second and subsequent owners. The weakest restrictions permit the owner to sell freely in the speculative market but then repay the subsidies out of the sales proceeds. While this supposedly enables the funds to be recycled to other buyers, repayment typically is interest free (and inflation free), and often the amount that must be repaid declines with time, so eventually no recapture occurs. Another approach places limits on the price for which the house may be sold, usually allowing an annual increment above the original purchase price equal to the overall rate

of inflation or some fixed rate, such as 5%. The public agency then has a first option to purchase at this price or may require sale at this price to another qualified buyer. While this might appear to prevent speculative windfalls, it does not, because of the financial leverage involved in low downpayment residential purchases, even assuming modest market appreciation.

Although rarely done in practice, there is no reason why the formula for resale-restricted individual ownership could not be a limited-equity formula comparable to those used in limited-equity co-ops. Under such circumstances, it would be possible to achieve nonspeculative individual ownership. There are, however, some legal and practical problems with the enforcement of most resale restrictions, whether mild or strong. Recapture provisions pose the least difficulty because they are easily secured through property liens, which pose no legal or enforcement difficulties, since the owner would not be able to sell without discharging the lien. Price, equity, and first-option limitations are more problematical because they generally involve deed covenants, which in most states are legally limited in duration and enforceability. The best approach is thus to allow the buyer to own the house but not the land—to have the land owned by a land trust or public agency.

Some might wonder why a low-income family should be forced to accept a resale restriction, and especially a permanent limited-equity restriction, in order to achieve homeownership. Why shouldn't such households be permitted to accumulate whatever wealth the real estate market provides, just as higher-income households have been able to achieve? Are not resale restrictions a form of discrimination, against low-income homebuyers in general and homebuyers of color in particular, as the latter have for so long been denied homeownership through discriminatory sales and lending practices?

Certainly, any household who wishes to have unrestricted homeownership should be able to do so through conventional purchase and financing terms, without discrimination—but also without public or community financial assistance. If, however, a house-

hold receives downpayment grants, below-market loans, and possibly deferred payment loans, that household is in effect entering into shared ownership with the community—the community thus legitimately having certain rights to the property. What does the homebuyer get from such an arrangement? First, access to homeownership, with the associated status and security of tenure that presumably would not otherwise be affordable. Second, exclusive use and control of the living space—for instance, it is not necessary to share the space with the community “co-owner” or be constrained by a landlord. Third, potential income tax benefits from the deductibility of mortgage interest and property taxes. Fourth, no rent payments on the community's share of the property. Fifth, the opportunity to build wealth on the homebuyer's share of the property. What does the homebuyer *not* get? The right to sell the community's share and thereby appropriate for private gain the wealth that rightly belongs to the community. Nonspeculative homeownership, with permanent limited-equity resale restrictions, is thus not only not discriminatory but is more than fair to those who participate in it.

INCREASING THE AMOUNT OF SOCIALLY OWNED HOUSING

How could the amount of social housing in our nation be expanded? There are a variety of routes, including:

- production of new housing, by non-profit or public developers, or by for-profit developers for transfer upon completion to social ownership;
- preservation of existing subsidized rental housing, with transfer from for-profit owners to social owners;
- conversion of private rental housing, where owners are irresponsible or are otherwise willing to sell, through the use of receivership, eminent domain, and tenant buy-out rights and assistance (see Stone, 1993, pp. 228–231, 248–249);

- foreclosure protection and equity conversion as an option for low-income and elderly homeowners in return for them agreeing to current or future transfer to social ownership (see Stone, 1993, pp. 226–228, 238–239; Stone, 2002);
- permanent limited-equity resale restrictions with subsidized first-time homebuyer programs (see Stone, 2002).

Historically, most of the social housing in the United States has been provided through publicly subsidized new construction and substantial rehabilitation, even though this is the most capital-intensive, costly, time-consuming, and complex of the available routes. Recently, however, considerable attention has been focused on strategies to preserve subsidized housing that was built by private developers in the 1960s and 1970s and convert it to true social ownership (see Chapter 7). However, to date, relatively little effort has gone into the other routes, which are surely the most cost-effective ways of achieving substantial increases in stock of social housing.

CONCLUSION

The notion that housing can be situated outside the speculative market has a long and established albeit constrained and little-recognized history in the United States. Various forms of nonspeculative ownership exist in practice, and real estate law continues to evolve to encompass new ideas and new economic and political realities. Each form of ownership has its trade-offs, its partisans, and its critics. They differ in the degree to which they are truly and permanently nonspeculative and should be evaluated along these dimensions. Nonetheless, the various forms of socially owned rental and nonspeculative homeownership have a number of common components that distinguish them from both conventional rental and speculative homeownership and point toward true resident-controlled social ownership. The notion that housing should not and need not be a speculative commodity clearly is growing in legitimacy. As a prac-

tical matter, meaningful community development will require that social housing not only becomes more acceptable in concept but will be greatly expanded in quantity and become the attractive alternative to conventional homeownership.

NOTES

1. First, as indicated in the text, there were about 200,000 occupied 202 units in 1998 (U.S. Department of Housing and Urban Development, 2000).

Second, under the Section 221(d)(3) BMIR, Section 236 and Rent Supplement programs, 192,000 units were originally under nonprofit ownership (Clay, 1987, p. 9). However, due to financial difficulties in both for-profit and nonprofit developments, HUD took over about one-fourth of all the units. While there are differing figures on how many remain in direct nonprofit ownership, how many are still held by HUD, and how many have been resold to nonprofits (Clay, 1987, p. 9; U.S. General Accounting Office, 1986, p. 23; Achtenberg, 1989, pp. 228–229), I estimate conservatively that at least 150,000 units originally produced under the programs are still owned by nonprofits.

Third, about 180,000 units owned by nonprofits were developed under various early unsubsidized FHA mortgage-insurance programs but subsequently received Section 8 subsidies, or, in a very few cases, other subsidies (U.S. General Accounting Office, 1986, p. 23). No hard data are available on how many are still part of the subsidized nonprofit inventory, but I am assuming at least 150,000.

Fourth, while there is virtually no official information on nonprofit ownership of units produced under the HUD Section 8 and HOME production programs, the best estimates come from studies of community-based developers. A 1998 census of such developers revealed that they have produced about 550,000 below-market units (National Congress for Community Economic Development, 2000). Given the history of these organizations, most of these units have been rental housing. However, to some extent they have been producing units for homeownership. Without hard data, there is no way of knowing how many of the 550,000 CDC units are in the latter category, but it is probably fewer than 100,000. So, I am conservatively including 450,000 CDC units in the total of nonprofit rentals.

Fifth, the latter group of organizations does not include city-wide and regional nonprofits that do not fit the “community-based” definition. Such regional nonprofits have produced or preserved over 300,000 below market rental units (Housing Partnership Network, 2002). It is likely that some

of the at-risk subsidized housing such entities have preserved from going to market-rate rents includes some of the older nonprofit housing in the third category above. So, to be conservative, I have assumed their net addition to the total below market "social" rental housing stock to be 250,000 units.

Combining the estimates for the five groups yields an aggregate estimate of 1,200,000 subsidized units in nonprofit ownership. Allowing for a margin of error of 100,000 units yields the text estimate of 1.1 to 1.3 million units.

Not included in this total are nonprofit rental units without subsidies developed under the various early federal mortgage-insurance programs. No estimates are available for the number of units in this category. Also not explicitly included in the estimate are Farmers Home Administration Section 515 subsidized rental units. There are about 300,000 units under this program (National Low Income Housing Preservation Commission, 1988, p. 17). It is not known how many are under nonprofit ownership, but it is possible that some if not most of these are included in the categories above. Note, finally, that the text estimate does not include nonprofit housing produced or acquired without federal involvement, either under state or local programs or with no government assistance at all. Again, no estimates are available for this category. It is thus likely that the actual total figure for nonprofit rental units is somewhat higher.

2. This is a very rough estimate based on anecdotal evidence, since no systematic accounting is available.

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