Washington University Journal of Law & Policy

Volume 43 *New Ideas in Law and Legal Education*

2014

Limited Equity Cooperatives: The Non-Economic Value of Homeownership

Julie D. Lawton
DePaul University College of Law

Limited Equity Cooperatives: The Non-Economic Value of Homeownership

Julie D. Lawton*

INTRODUCTION

In a little town not too far off the southern coast of South Carolina, Ida Jamieson Junior, many years after being freed from slavery, bought a small house from Mt. Tabor Baptist Church. The house had two bedrooms and a large backyard where her family spent many years hosting family reunions. Over the years, other family members bought property on nearby Carroll Street, creating a family community. Wanting to keep the property in the family, upon her death, Ida passed her house to her granddaughter, Jennie, who owned it until her own death in 1993. Today, as Ida's great-great-great-granddaughter, I can, and do, still visit the house. I recall family reunions in the backyard, playing with cousins around throngs of gnats so thick you could barely see. I recall spending afternoons running through the large rooms, over the hardwood floors, through the kitchen where food was always on the stove, safe in my family's home.

I grew up in a family of homeowners—every direct family member from Ida to me has owned real property. Owning a home provided my family a sense of stability, knowing that, no matter what happened financially in our lives, we always had a home. It provided

---

* Julie D. Lawton is an Assistant Clinical Professor of Law and the Director of the Housing and Community Development Legal Clinic at DePaul University College of Law. For their reviews and comments, many thanks to Paul Tremblay, Alina Ball, Jim Rowan, Brenda Smith, Anne Smetak, and Kathryn Loncarich from the NYU Clinical Law Review Writer's Workshop; and Christine Chabot, Todd Haugh, Robert Knowles, Barry Kozak, Nadia Sawicki, Stuart Ford, and Margaret Kwoka of the Chicago Junior Faculty Workshop. Additional thanks to Max Huffman, Patience Crowder, and Michael Diamond for their feedback and comments. Thank you to Dean G. Mark and DePaul University for the summer research grant of support. For outstanding research assistance, thank you to Matt Dostal, Joanne Moon, Alex Gerteis, and Marina Merjan.

my family a financial foundation with wealth appreciation and equity that was available when needed. My family's experience formulated my own idea of homeownership and informed my decision on whether and where to buy a house. I now own my third home and bought all three with an eye toward the purchase as a financial investment. For me, homeownership has always been a means of, at a minimum, preserving capital, and, preferably, growing capital. I am not alone in this preference since, for most Americans, homeownership is our largest investment and the largest source of wealth.[1]

Economists have argued there are two main purposes of homeownership. The first is housing as a utility for consumption, and the second is housing as an investment vehicle. Legal scholars, on the other hand, view homeownership in more personal terms. Margaret Radin, in her watershed article, argues that homeownership is so closely imbued with the person that it is affirmatively part of one's self—the personhood of property.[2] Radin suggests that one's home is such a part of the way a person constitutes oneself that the property becomes an element of personhood, something no longer entirely external to the person. In response, however, Stephanie Stern argues there is little to no empirical evidence to support this proposition.[3] She argues instead that homeownership has been provided unwarranted legal and economic protection, and has no more intrinsic value to the individual than any other possession.

Many Americans embrace homeownership for reasons beyond investment. This Article evaluates the meaning of homeownership, particularly when wealth creation is not the primary goal. There are non-economic values to homeownership, particularly for low- and moderate-income residents, which remain unexplored. This Article seeks to evaluate the arguments of legal scholars and economists in light of the limited equity cooperative, a form of homeownership that significantly limits equity appreciation for the owner. While the

1. THOMAS SHAPIRO ET AL., INST. ON ASSETS & SOC. POLICY, THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK-WHITE ECON. DIVIDE 3–4 (Feb. 2013), *available at* http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf.

2. *See infra* note 47.

3. *See infra* note 126.

limited equity cooperative is an older form of homeownership, it has reemerged as a valued homeownership option, especially, though not exclusively, for low- and moderate-income residents. This Article works to dispel the argument that homeownership, particularly limited equity cooperative homeownership, is less valuable for a homeowner because equity appreciation is restricted or because limited equity cooperatives are a non-traditional form of homeownership.

Part I of the Article will provide a brief history of the federal government's efforts to promote homeownership, particularly for low- and moderate-income individuals. Part II will provide a brief description of the different types of traditional homeownership models common in the United States. Part III will provide a history of and evaluate one of the alternatives to the traditional homeownership model—the housing cooperative, specifically, the limited equity cooperative. Part IV concludes with an analysis of the non-economic value of homeownership as it relates to limited equity cooperative homeownership.

I. THE PROMOTION OF HOMEOWNERSHIP

A. Federal Government Promotion of Homeownership

For decades, the federal government has sought to increase the rate of homeownership for Americans.[4] This support for homeownership can be seen in three major areas: (1) regulation and participation in the financial markets, (2) direct financial subsidies, and (3) tax policy.[5] Beginning in 1918, the Department of Commerce sponsored the "Own Your Own Home" campaign, engaging over 7000 civic partnerships called the "Better Homes Committees" to promote homeownership.[6] However, despite the federal

---

4. Michael S. Carliner, *Development of Federal Homeownership "Policy,"* 9 HOUSING POL'Y DEBATE 299, 300 (1998).

5. *Id*.

6. J. Michael Collins, *Federal Policies Promoting Affordable Homeownership: Separating the Accidental from the Strategic*, *in* CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP 69, 70 (William M. Rohe & Harry L. Watson eds., 2007).

government's promotion of homeownership, many borrowers lacked the ability to obtain a mortgage loan. To purchase a home during the 1920s, mortgage lenders required a 50 percent down payment and a mortgage loan term of no more than three to five years.[7] Because of this, low- and moderate-income borrowers without sufficient assets were often unable to qualify for a mortgage to purchase property. Therefore, homeownership was primarily reserved for older couples, who had saved enough for the 50 percent down payment, or for wealthy homeowners, who either had enough liquidity for the down payment or could purchase their homes without a loan.[8]

During the Great Depression, Congress sought to promote homeownership by passing the National Housing Act of 1934 (the "1934 Housing Act").[9] The 1934 Housing Act authorized national mortgage associations to purchase and sell first mortgages, to enable lenders to issue more loans by inserting liquidity into the mortgage market, and to expand the pool of qualified borrowers by lowering the down payment requirement from 50 percent to 20 percent of the property's appraised value.[10] As a result, in 1938, Congress chartered the first national mortgage association, the Federal National Mortgage Association, currently known as Fannie Mae, to "support liquidity, stability, and affordability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold" and to "borrow money . . . through the issuance of notes, bonds, debentures, or other such obligations."[11]

During the 1940s and 1950s, homeownership became more accessible to potential homeowners. In 1944, the federal government authorized the GI Bill, enabling the Veteran's Administration to

---

7. Nicolas P. Retsinas & Eric S. Belsky, *Examining the Unexamined Goal*, *in* LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL 1, 4 (Nicolas P. Retsinas & Eric S. Belsky eds., 2002).

8. *Id*.

9. National Housing Act of 1934, 12 U.S.C. § 1701 et seq. (2013).

10. *Id*.

11. *Fannie Mae Charter*, FANNIE MAE, http://www.fanniemae.com/portal/about-us/governance/our-charter.html (last visited July 27, 2013). Note that Fannie Mae does not originate loans or lend money directly to individuals to purchase residential property. Fannie Mae's primary function is to securitize mortgage loans originated by commercial lenders into Fannie Mae mortgage-backed securities and to purchase mortgage loans and mortgage-related securities for Fannie Mae's portfolio. *Id.* Fannie Mae issues bonds to domestic and international buyers to obtain the funds necessary to purchase the mortgages. *Id*.

provide mortgage loans with a zero percent down payment for veterans, focusing on the large number of veterans returning from World War II.[12] As a result of these options, the percentage of American homeowners increased.[13] By the 1950s, borrowers no longer needed a 50 percent down payment. A typical borrower could obtain a mortgage loan with only a 20 percent down payment but with a longer loan term of twenty years.[14]

By 1986, the federal government's support of homeownership became a matter of federal tax policy. Prior to 1986, home mortgage interest, along with interest from other consumer debt, was deductible from federal income taxes.[15] With the passage of the 1986 Tax Reform Act, Congress and President Reagan removed the deductibility of all consumer loan interest from federal income taxes, excepting the deductibility of home mortgage interest. This protection secured the federal government's support for homeownership.[16]

In 1995, President Clinton's administration created the National Homeownership Strategy to increase homeownership in communities with lower-than-average homeownership rates.[17] The program's goals included "cutting housing production costs," "making financing more available, affordable, and flexible," "targeting assistance to underserved communities," and "opening the homeownership market to underserved populations."[18] President Clinton's homeownership strategy was based on the argument that homeownership is a "key source of individual wealth and national prosperity."[19]

During the 2000s, President George W. Bush also sought to expand homeownership to more Americans through further federal

---

12. Collins, *supra* note 6, at 70.

13. Homeownership in the United States increased from 43.6 percent in 1940 to 55 percent in 1950. U.S. CENSUS BUREAU, HISTORICAL CENSUS OF HOUS. TABLES (2011), *available at* http://www.census.gov/housing/census/data/owner.html.

14. Retsinas & Belsky, *supra* note 7, at 4.

15. Carliner, *supra* note 4, at 301. *See* Revenue Act of 1913, ch. 16, 38 Stat. 114.

16. Carliner, *supra* note 4, at 301. *See* Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085.

17. U.S. DEP'T OF HOUS. & URBAN DEV., URBAN POLICY BRIEF, NO. 2: HOMEOWNERSHIP & ITS BENEFITS (1995), *available at* http://www.huduser.org/publications/txt/hdbrf2.txt [hereinafter URBAN POLICY BRIEF].

18. *Id.*

19. *Id.*

government support.[20] In 2001, President Bush advocated a single-family affordable tax credit to encourage the production of affordable homes for sale to low- and moderate-income families, as well as a program to provide families with down payment assistance.[21] President Bush also sought collaboration between the private real estate and mortgage finance sectors and the non-profit sector, to eliminate barriers to homeownership through increased financial and organizational commitments.[22]

B. Does Homeownership Remain a Defensible Strategy?

After so many years of the federal government's promotion and support of homeownership, commentators and advocates have raised the question of whether homeownership remains a defensible strategy, particularly for low- and moderate-income residents.[23] This question is particularly pertinent given the significant declines in the housing market.[24] During the five-year period ending in 2011, housing prices in the United States suffered the most significant decline since the Great Depression.[25] In the fourth quarter of 2011, average house prices were approximately 21 percent lower than the

20. *A Home of your Own: Expanding Opportunities for All Americans*, THE WHITE HOUSE, http://georgewbush-whitehouse.archives.gov/infocus/homeownership/homeownership-policy-book-background.html (last visited Mar. 17, 2013) [hereinafter *A Home of your Own*].

21. *Id*.

22. *Id*.

23. Winston Pitcoff, *Has Homeownership Been Oversold?*, SHELTERFORCE (Jan.–Feb. 2003), http://www.nhi.org/online/issues/127/homeownership.html.

24. *See* LI-NING HUANG & STEVE DEGGENDORF, FANNIE MAE, WHAT DRIVES CONSUMERS' INTENTIONS TO OWN OR RENT 1 (2012), *available at* http://www.fanniemae.com/resources/file/research/ownrent/pdf/own-rent-research-paper-2012.pdf ("The average national foreclosure rate was 4.95 percent in 2010 and 4.1 percent in 2011, compared with the historical average of 0.32 percent over the 1980–2006 period. The percentage of homeowners nationally who were more than ninety days late on their mortgage payment was 3.5 percent in late 2011, compared with the historical average of 0.78 percent over the 1980–2006 period."); Edward Pinto, *Actually, the Affordable Housing Push Did Cause the Subprime Crisis*, AEIDEAS (Mar. 30, 2012), http://www.aei-ideas.org/2012/03/actually-the-affordable-housing-push-did-cause-the-subprime-crisis; Nahid Anaraki, *A Housing Market Without Fannie Mae and Freddie Mac: Effect on the Homeownership Rate*, HERITAGE FOUND. (June 11, 2012), http://www.heritage.org/research/reports/2012/06/a-housing-market-without-fannie-mae-and-freddie-mac-effect-on-the-homeownership-rate.

25. HUANG & DEGGENDORF, *supra* note 24, at 1.

peak of 2006.[26] To answer the question of whether promoting homeownership is still defensible today, it is helpful to evaluate why homeownership has been so highly valued.

One reason homeownership has been promoted is profit. Developers redevelop land to make a profit. Governments invest public resources in a development to generate their own profits, to create jobs, to increase the tax base, and to expand businesses.[27] Commercial lenders provide loans to homeowners to profit from the fees and interest from the loan. Even non-profit developers, who might not consider financial profit as a primary motive for their housing production, seek non-financial profit in the form of increased housing units and redevelopment of blighted areas.

Homeowners also seek profit. One commonly cited and compelling reason for promoting homeownership for low- and moderate-income residents is the opportunity for equity appreciation.[28] President Bush argued that "homeownership benefits individual families by helping them build economic security . . . ."[29] Scholars and activists have persuasively argued that wealth creation from homeownership equity is a valued means of helping low- and moderate-income residents become self-sufficient.[30] This is particularly important for African-American residents. Studies have

26. *Id*.

27. Emily Achtenberg & Peter Marcuse, *Toward the Decommodification of Housing*, *in* CRITICAL PERSPECTIVES IN HOUSING 474, 483 (Rachel Bratt et al. eds., 1986).

28. *See, e.g.*, Rachel Bogardus Drew & Christopher Herbert, *Post Recession Drivers of Preferences for Homeownership* 9 (Harvard Univ. Joint Ctr. for Housing Studies, Working Paper No. W12-4, 2012), *available at* http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w12-4_drew_herbert.pdf. It is important to note, however, that in an October 2011 study evaluating rationales for preferring homeownership, lifestyle choices were the top four reasons selected by residents. *Id.* Wealth creation was noted by a majority of the respondents, though was not the top financial reason. The top financial reason, noted by almost 60 percent of the respondents, was that renting was a bad investment. *Id*.

29. *A Home of your Own*, *supra* note 20 ("Owning a home provides a sense of security and allows families to build wealth. A home is the largest financial investment most American families will ever make, and it allows families to build financial security as the equity in its home increases. Moreover, a home is a tangible asset that provides a family with borrowing power to finance important needs, such as the education of children.").

30. MIRIAM AXEL-LUTE, NAT'L HOUS. INST., HOMEOWNERSHIP TODAY & TOMORROW: BUILDING ASSETS WHILE PRESERVING AFFORDABILITY (2013), *available at* http://www.nhi.org/pdf/NHI-Case-Studies_CP_10_10.pdf; BRUCE KATZ ET AL., BROOKINGS INST., RETHINKING LOCAL AFFORDABLE HOUS. STRATEGIES: LESSONS FROM 70 YEARS OF POLICY & PRACTICE 59 (2003), *available at* http://www.brookings.edu/es/urban/knight/ chapter3.pdf.

shown the wealth gap between white Americans and African-Americans is related to the continued difference in homeownership rates.[31] In fact, one recent study by the Institute on Assets and Social Policy traced the same white American and African-American households for over twenty-five years, from 1984 to 2009.[32] During this time, the total wealth gap between white American and African-American families nearly tripled, increasing from $85,000 in 1984 to $236,500 in 2009.[33] The largest predictor of the gap in wealth growth by race was the number of years families owned their homes.[34] Thus, the ability to own and retain a home is a major and direct influence on wealth accumulation.[35]

According to the study, "residential segregation by government design" directly impacts the challenges African-American families have faced in buying homes and increasing equity in those homes.[36] Residential segregation, a policy utilized by the federal Fair Housing Administration for many years,[37] artificially lowers demand in predominantly African-American neighborhoods and places a ceiling on the equity appreciation in these neighborhoods.[38] Other factors, including redlining, discriminatory mortgage-lending practices, lack of access to credit, and lower incomes have further depressed the homeownership opportunities for African-American families.[39] The ability to qualify, purchase, and retain a home is directly related to a family's ability to accumulate wealth.

---

31. SHAPIRO ET AL., *supra* note 1 (According to this study, the homeownership rate for white American families is 28.4 percent higher than the homeownership rates for African-American families.).

32. *Id*. at 1.

33. *Id*.

34. *Id*. at 3.

35. *Id*.

36. *Id*.

37. Cecil Hunt, *The Color of Perspective: Affirmative Action and the Constitutional Rhetoric of White Innocence*, 11 MICH. J. RACE & L. 477, 540 (2006) (describing the New Deal Home Owner's Loan Corporation's practice of "redlining," wherein the government marked in red predominately black neighborhoods and automatically assigned occupants there the lowest rank of acceptable loan risk, a designation largely carried over to the Fair Housing, Administration and Veterans Administration's own loan underwriting criteria).

38. SHAPIRO ET AL., *supra* note 1, at 3.

39. *Id*. at 3–4.

Prior to the housing bubble, homeownership performed well as a long-term investment.[40] The national average annual increase in nominal house prices between 1968 and 2001 was 6.3 percent.[41] Such appreciation argues in favor of homeownership as one of the tools for accumulating household wealth.[42] Homeownership has long been the largest single financial investment and the largest asset for most Americans.[43]

Despite the recent fluctuations in the housing market, a 2011 study by Fannie Mae shows that homeownership still appeals to the majority of Americans.[44] Eighty-five percent of the respondents said that owning makes more sense financially than renting, and 64 percent of the respondents in the study stated that if they were going to move, they would buy a home in the next move.[45] According to the study, the recent challenges in the housing market have not discouraged Americans from wanting to own a home, even when faced with the risks of mortgage default and perceived home value appreciation/depreciation.[46] One author remarked, "Our reverence for the sanctity of the home is rooted in the understanding that the home is inextricably part of the individual, the family, and the fabric of society."[47] President Bush went so far as to say that "homeownership lies at the heart of the American Dream."[48] As of the fourth quarter of 2012, 65 percent of American households were homeowners.[49] The American Dream of owning a home appears to persevere.

---

40. URBAN POLICY BRIEF, *supra* note 17, at 3 ("Real prices for the median-priced home increased by a total of 41 percent between 1960 and 1989. Even the lowest-priced houses increased in value by almost 30 percent.").

41. ZHU XIAO DI ET AL., HARV. UNIV. JOINT CTR. FOR HOUS. STUDIES, THE IMPORTANCE OF HOUS. TO THE ACCUMULATION OF HOUSEHOLD NET WEALTH 3–4 (2003).

42. David. S. Jones, *Homeownership Means Wealth*, TEX. REAL ESTATE (Mar. 25, 2002), http://texasrealestate.com/web/2/22/more/032502.cfm.

43. SHAPIRO ET AL., *supra* note 1.

44. HUANG & DEGGENDORF, *supra* note 24, at 3.

45. *Id*.

46. *Id*. at 6.

47. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 1013 (1982).

48. *A Home of your Own*, *supra* note 20.

49. OFFICE OF POL'Y DEV. & RESEARCH, FED. DEP'T OF HOUS. & URBAN DEV., HOUS. MARKET CONDITIONS REPORT: 4TH QUARTER 2012 (Feb. 2013), *available at* http://www .huduser.org/portal/ periodicals/ushmc/winter12/USHMC_4q12_summary.pdf.

C. Why Homeownership for Low- and Moderate-Income Residents?

While many would argue that housing is a fundamental obligation of our country, few would argue that the right to housing includes the right to homeownership. Despite this, the high number of homeowners spending more than 30 percent of their income on housing costs underscores the need for continued public and private investment in affordable homeownership.[50] In designing its homeownership policy, the federal government has noted that homeownership not only counters poverty, it offers homeowners protection against rising housing costs, increased savings and purchase power, financial stability with equity appreciation, and the ability to lower housing costs by refinancing mortgages at a lower rate.[51]

Aside from the financial benefits, there are many social and lifestyle benefits of affordable homeownership. Michael Diamond, a distinguished affordable housing scholar and advocate, noted how a resident's sense of home and its resulting stability improved physical health of the family, increased participation in civic activities, improved educational performance of the resident's children, and increased racial and economic integration.[52] Property scholar Professor Lorna Fox O'Mahony argues that "[h]omeownership is not only associated with financial security, but is also strongly associated with personal and family security."[53] In a study on the effects of homeownership on the self-esteem and satisfaction of low-income people, researchers found homeowners experienced a significant

---

50. U.S. CENSUS BUREAU, 2011 AM. HOUS. SURVEY OF HOUS. COSTS, TABLE C-10-A0 (2011) (finding 32 percent of homeowners pay 30 percent or more of their income on housing costs).

51. *Paths to Homeownership for Low-Income & Minority Households*, FED. DEP'T OF HOUSING & URBAN DEV. (Feb. 2012), http://www.huduser.org/portal/periodicals/em/fall12/highlight1.html [hereinafter *Paths to Homeownership*].

52. Michael Diamond, *Affordable Housing and the Conflict of Competing Goods: A Policy Dilemma*, *in* AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS 1, 1–2 (Nestor M. Davidson & Robin Paul Malloy eds., 2009), *available at* http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1262&context=facpub.

53. Lorna Fox O'Mahony, *Homeownership, Debt, and Default: The Affective Value of Home and the Challenge of Affordability*, *in* AFFORDABLE HOUSING AND PUBLIC-PRIVATE PARTNERSHIPS 169 (Nestor M. Davidson & Robin Paul Malloy eds., 2009).

increase in life satisfaction.[54] The results also indicate that the condition of an owner's housing has important effects on both the self-esteem and life satisfaction of the residents.[55]

There are also arguments against targeting low- and moderate-income residents for homeownership. One argument is the inability of low- and moderate-income owners to retain their homes during times of economic instability.[56] Low- and moderate-income homeowners are more susceptible to household financial instability from economic recessions,[57] unexpected health costs,[58] and job instability.[59] Homeownership, while frequently cited as a means of wealth creation for low- and moderate-income residents, is also an investment with risk. Homeowners can lose money on the sale of a home or earn less of a return than if they had rented.[60] This is evident

---

54. William M. Rohe & Michael A. Stegman, *The Effects of Homeownership on the Self-esteem, Perceived Control and Life Satisfaction of Low-Income People*, 60 J. AM. PLAN. ASS'N 173, 180 (1994).

55. *Id*. at 182. In their article about the effects of homeownership on the self-esteem of low-income residents, Rohe and Stegman explore the various claims made by other researchers about the social benefits of homeownership for low-income residents. They note claims that owners have higher social status and, thus, more self-esteem. *Id.* at 173, 174. They also cite claims that homeownership gives people a greater sense of control over their lives, including control over who enters their dwelling units, control over cosmetic changes to their homes and landscape, and control over circumstances that might force residents to move. *Id.* at 173. They highlight, however, that the limited research at the time on these questions was focused on middle- and upper-income homeowners, so the study's findings' applicability to low- and moderate-income homeowners is not conclusive. *Id.* at 176.

56. William H. Rohe et al., *Social Benefits and Costs of Homeownership*, *in* LOW-INCOME HOMEOWNERSHIP: EXAMINING THE UNEXAMINED GOAL 381, 386 (Nicolas P. Retsinas & Eric S. Belsky eds., 2002) ("Financial instability puts lower-income households at risk of losing their homes owing to mortgage foreclosure. The psychological impact of homeownership could be negative for a person who is unable to pay the mortgage and is forced from his or her home.").

57. SARAH BLOOM RASKIN, GOVERNOR, BD. OF GOVERNORS OF THE FED. RESERVE SYS. AT THE NAT'L CMTY. REINVESTMENT COALITION ANNUAL CONFERENCE: FOCUSING ON LOW- & MODERATE-INCOME WORKING AMS. (Mar. 22, 2013).

58. Mark R. Lindblad et al., *Coping with Adversity: Personal Bankruptcy Decisions of Lower-Income Homeowners Before and After Bankruptcy Reform* (UNC Center for Community Capital, Working Paper 2011), *available at* http://ccc.unc.edu/contentitems/coping-with-adversity-personal-bankruptcy-decisions-of-lower-income-homeowners-before-and-after-bankruptcy-reform/.

59. RASKIN, *supra* note 57.

60. *Paths to Homeownership*, *supra* note 51.

in the significant declines in housing prices during the Great Recession.[61]

Another argument is simply cost. The federal and local governments and non-profits funded by public and private sources have dedicated significant resources to help low- and moderate-income residents overcome the barriers to homeownership.[62] Down payment assistance programs, homeownership counseling programs, adjustments to underwriting standards, and closing cost assistance are just a few of the programs and initiatives funded by public and private sources to increase homeownership among low- and moderate-income residents.

Low- and moderate-income homeowners also disproportionately struggle with home maintenance costs, affecting their ability to retain their home. Upper-income homeowners tend to have larger disposable incomes, therefore helping to financially insulate themselves from the costs of routine home maintenance and unexpected home repairs. Lower-income homeowners often struggle with their homes' basic upkeep.[63] According to one study, from 1984 to 1993, "nearly 1 million lower income owners spent less than $100 per year on housing maintenance," while "90 percent of higher income owners spent $257 or more annually on maintenance."[64] This study notes that a home that is affordable to a first-time homeowner can become unaffordable during the owner's residency, because many homeowners do not provide the maintenance and upkeep necessary to preserve a home's value and to extend the home's useful

61. INGRID GOULD ELLEN & SAMUEL DASTRUP, RUSSELL SAGE FOUND. & STANFORD CTR. ON POVERTY & INEQUALITY, HOUS. & THE GREAT RECESSION 1 (2012), *available at* http://furmancenter.org/files/publications/HousingandtheGreatRecession.pdf; ANAT BRACHA & JULIAN C. JAMISON, CTR. FOR BEHAVIORAL ECON., FED. RESERVE BANK OF BOSTON, SHIFTING CONFIDENCE IN HOME OWNERSHIP: THE GREAT RECESSION 2 (2011), *available at* http://www.bos.frb.org/economic/conf/LTE2011/papers/bracha_jamison.pdf.

62. *See, e.g.*, *Down Payment Assistance Programs*, FED. HOUSING ADMIN., http://www.fha.com/fha_programs (last visited June 14, 2013); *Single Family Housing Loans and Grants*, U.S. DEP'T OF AGRIC., RURAL DEV., http://www.rurdev.usda.gov/HSF_SFH.html (last visited June 14, 2013).

63. JOSEPHINE LOUIE ET AL., HARV. UNIV. JOINT CTR. FOR HOUS. STUDIES, THE HOUS. NEEDS OF LOWER-INCOME HOMEOWNERS 2 (1998), *available at* http://www.jchs.harvard.edu/sites/jchs. harvard.edu/files/louie_mcardle_belsky_w98-8.pdf.

64. *Id*. at 4.

life.[65] Without the assistance of non-profit or government home maintenance programs, lower-income homeowners do not have the income to improve their homes, pay for routine maintenance and upkeep, or pay for modifications to preserve the home or improve its value.[66] As a result, those who are unable to properly maintain their home risk losing the equity they might have accumulated in their home, one of the major factors cited for increasing homeownership among low- and moderate-income homeowners.[67]

As Part I has shown, the federal government has spent significant resources for decades promoting and supporting homeownership, and in more recent years has focused on increasing homeownership for low- and moderate-income residents. This strategy has had some success, as homeownership among low- and moderate-income households, as well as homeownership among African-American and Hispanic households, has increased.[68] And, as noted above, despite the recent challenges in the housing market, Americans still aspire to become homeowners. Part II will continue with a discussion of the different types of homeownership models available, and Part III will continue with an evaluation of one type of homeownership model, the housing cooperative.

II. DIFFERENT TYPES OF HOMEOWNERSHIP MODELS

There are primarily five homeownership models in this country: (1) single-family, row-home, and town-home fee simple ownership; (2) condominium fee-simple ownership; (3) community land trusts; (4) housing cooperatives; and (5) mutual housing associations.[69] Fee simple ownership, whether in a single-family structure or a condominium, often allows the most equity appreciation for the owner, provided there are no income or price restrictions on resale.

65. *See id*. at 3–4.

66. *See id*. at 19.

67. *Id*.

68. ERIC S. BELSKY & MARK DUDA, HARV. UNIV. JOINT CTR. FOR HOUS. STUDIES, ANATOMY OF THE LOW-INCOME HOMEOWNERSHIP BOOM IN THE 1990S 1 (2001), *available at* http://www .jchs.harvard.edu/sites/jchs.harvard.edu/files/liho01-1.pdf.

69. David H. Kirkpatrick, *Cooperatives and Mutual Housing Associations*, 1 J. AFFORDABLE HOUSING & CMTY. DEV. L. 7, 7 (1992).

This type of homeownership—the private, suburban, single-family detached house—is the most preferred in this country and has been called the "core element" of the "American Dream."[70]

There are numerous barriers to fee simple homeownership, particularly for low- and moderate-income residents, which make obtaining such a home very difficult.[71] To purchase a fee simple home, the buyer often needs to obtain a mortgage to pay for the purchase. To obtain a mortgage loan from a lender, the lender will evaluate the buyer's ability to repay the loan and the buyer's likelihood of repayment.[72] The lender will require the buyer to have income sufficient to repay the loan, as well as a high enough credit score[73] to evidence the buyer's likelihood of repayment. In addition, lenders generally require the buyer contribute at least 3 percent, and sometimes up to 30 percent, of the purchase price. Buyers are often required to pay the transaction (or closing) costs of obtaining the mortgage, including any transfer taxes assessed by the local taxing jurisdiction, the cost of appraising the value of the home, the cost of a property survey of the home, any financing fees assessed by the lender, and any other ancillary costs associated with reviewing, processing, and issuing the mortgage loan. For most buyers, the down payment and closing costs required to obtain the mortgage will be thousands of dollars, which is significantly more than many buyers, especially low- and moderate-income buyers, will be able to afford.

Given the "barriers to entry" for low- and moderate-income residents seeking to purchase a fee simple home, some scholars and affordable housing advocates have promoted alternatives to the traditional fee simple home purchase.[74] The community land trust,

---

70. O'Mahony, *supra* note 53, at 171.

71. KATZ, *supra* note 30, at 38**.**

72. *Home Loan Learning Center*, MORTGAGE BANKERS' ASS'N, http://www.homeloanlearningcenter.com/MortgageBasics/QualifyingforaMortgage.htm (last visited June 14, 2013).

73. *Id.* Bill Fair and Earl Issac developed the first commercial credit scoring system in 1958. Credit scoring is now used to analyze the risk or odds of a particular borrower repaying a specified loan. The use of credit scores allows a lender to rank borrowers according to their likelihood of repayment or default. Hollis Fishelson-Holstine, *Credit Scoring and Homeownership*, *in* BUILDING ASSETS, BUILDING CREDIT: CREATING WEALTH IN LOW INCOME COMMUNITIES 173, 173–74 (Nicholas Retsinas & Erik S. Belsky eds., 2005).

74. Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 111 (2011) ("With wider acceptance of the idea that owning a home is not primarily a speculative profit-making venture but instead can

shared equity homeownership models, and mutual housing associations have been promoted.[75] Another alternative homeownership model is the housing cooperative, an older form of homeownership that has recently reemerged as a valuable option.

III. HOUSING COOPERATIVES

This part of the Article will first discuss the common ownership structure of housing cooperatives and then provide a brief history of housing cooperatives. It also will discuss the two types of housing cooperatives: the market-rate cooperative and the limited equity or limited-income housing cooperative.

A. Housing Cooperative Ownership Structure

A housing cooperative is a type of corporation that is formed pursuant to state law for the purpose of owning residential property.[76] The residents who live on the property own shares in the housing corporation that owns the property.[77] It is important to note that, since the residents own shares in the housing cooperative corporation and do not own the property directly, the residents own personal property, not real property. A housing cooperative is frequently a multi-family building, but it can also be built as a collection of townhomes or garden-style units.[78]

---

be a safe investment in a personal and social good consumed over a long period of time, such alternative tenures can deliver both greater affordability and security for owners, as well as increased race and class diversity in neighborhoods.").

75. Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*, 5 B.U. PUB. INT. L.J. 69, 69 (1995) ("The development of housing as part of a land trust, housing cooperative or housing association is a time-tested concept. The development of housing as part of a community land trust, limited equity housing cooperative or mutual housing association, however, is a relatively new concept."). *See generally* Julia Barltolf Milne, *Will Alternative Forms of Common-Interest Communities Succeed with Municipal Involvement?*, 38 REAL EST. L. J. 273 (2009).

76. NAT'L CONSUMER COOP. BANK, A CONSUMER'S GUIDE TO BUYING A CO-OP 3, 6 (2007), *available at* http://www.ncb.coop/uploadedFiles/New_Site_Content/Finance_and_Grow/Consumers-Guide-to-Buying-a-Co-op.pdf.

77. *Id.*

78. NAT'L ASS'N OF HOUS. COOPS., HOUS. COOPS. IN U.S. 85, 86 (Mar. 2012), *available at* http://www.coophousing.org/uploadedFiles/NAHC_Site/Resources/Coop%20Housing%20USA.pdf.

The housing cooperative, as a corporation, has a governance structure similar to other corporations. A board of directors is democratically elected by the cooperative owners to manage the corporation according to an adopted set of corporate bylaws.[79] The housing cooperative, like other corporations, is a legal entity with the right to own property, enter into contracts, take on debt, and sue and be sued.[80]

Two distinct but interrelated documents represent a housing cooperative resident's ownership: the Occupancy Agreement, (sometimes called a Proprietary Lease) and the Cooperative Share. The Occupancy Agreement is between the individual cooperative owner and the housing cooperative, and is the contractual agreement detailing the owner's rights of residency.[81] The Occupancy Agreement details in which unit an owner has the exclusive right of occupancy, the amount of the owner's monthly maintenance fee payable to the cooperative, the names of the residents who have the exclusive right of occupancy in the unit, and any other rights and obligations of the owner.[82] Some Occupancy Agreements are for ninety-nine years,[83] like a ground lease, while others are renewed annually.[84]

The second document representing a resident's ownership in a housing cooperative is the Cooperative Share. The Cooperative Share evidences the resident's ownership of a share in the cooperative corporation and reflects any lien holder's rights against the Cooperative Share.[85] Some Cooperative Share prices are low enough where a cooperative owner can purchase the share outright for cash and without a loan. Other cooperatives, particularly the higher-end cooperatives frequently found in New York, have share prices in the

79. D.C. CODE §§ 29-908, 29-918 (2013).

80. D.C. CODE § 29-905 (2013).

81. Maldonado & Rose, *infra* note 93, at 1251 n.18 (citing PATRICK ROHAN & MELVIN A. RESKIN, REAL ESTATE TRANSACTIONS: HOUSING COOPERATIVE LAW AND PRACTICE, § 1.05(6) (Bender 1995)).

82. *Id*.

83. MD. ATT'Y GEN., COOP. HOUS.: EVICTION OF LESSEE FROM COOP. DWELLING UNIT IS LANDLORD-TENANT PROCEEDING 265, 266 (Sept. 29, 2000), *available at* http://www.oag.state.md.us/Opinions/2000/85oag265.pdf.

84. Born v. Bd. of Assessors, 427 Mass. 790, 791 (1998).

85. FED. HOME LOAN BANK BD., COOP. HOUS. 5 (1981).

hundreds of thousands of dollars and higher, and require the owner to obtain a loan to purchase the share, known as a share loan.[86]

B. Housing Cooperative Financing

When developing a housing cooperative, the developer generally must obtain a single loan, or blanket mortgage,[87] to cover the cost of land acquisition as well as construction of the property. Lenders will review the developer's loan application for the housing cooperative, evaluating many of the same factors they would when reviewing other residential real estate loan applications, such as the feasibility of the project and an appraisal of the property's value.[88]

In a condominium, this blanket mortgage is repaid with the proceeds from the sale of every individual condominium unit. For example, if a developer borrowed $1 million to acquire land and build a condominium, when the developer sells a condominium unit to an individual buyer for a purchase price of, for example, $250,000, a portion of the $250,000 will be used to repay the $1 million loan and reduce the outstanding balance of the blanket mortgage. Eventually, after a number of sales in the condominium building, the blanket mortgage will be repaid in full, and the developer will retain all remaining proceeds from the sale of each condominium unit. Once all of the units in the condominium building are sold and the condominium is fully occupied and operational, the blanket mortgage will have been repaid. The primary remaining costs are the ongoing costs of operating the property, as well as setting aside money into savings, or reserves, for future major renovations or for budgetary shortfalls in the operating income. The monthly condominium fee that each unit owner is required to pay to the condominium association pays these operating expenses and reserves.

---

86. *Id* at 8. The borrower requirements for a share loan generally mirror those of a loan to purchase a fee simple property. A share lender will often require a down payment, closing costs, sufficient income, and a high credit score to issue a share loan**.** *Id.* at 7–8.

87. NAT'L CONSUMER COOP. BANK, *supra* note 76, at 4 (defining "Blanket Mortgage" as "a single loan covering an entire building or property that the developer or cooperative corporation owns"). *Id*. Lenders issue blanket loans directly to, and in the name of, the cooperative corporation and are secured by a security interest in the cooperative corporation's property. FED. HOME LOAN BANK BD., *supra* note 85, at 5.

88. FED. HOME LOAN BANK BD., *supra* note 85, at 5.

When a developer sells shares in a housing cooperative, the developer can repay the loan in one of two ways. The developer can repay the blanket loan with proceeds from the sale of each cooperative share in a manner similar to that of a condominium. Alternatively, the blanket mortgage can be repaid over a much longer period of time, with monthly payments to the lender over a ten- to forty-year period. To repay the blanket mortgage over this longer period of time, the developer or housing cooperative uses money from the monthly housing maintenance payments made by the housing cooperative owners. As in a condominium, cooperative owners jointly own the common areas of the property. Also, as in a condominium, cooperative owners must jointly pay for the costs of operating the property. However, while condominium owners pay a condominium fee, in a housing cooperative, an owner's contributions to the costs of operating the property are called carrying charges.[89] Generally, the carrying charge will cover three main property costs: (1) property operating expenses, such as the maintenance expenses and property taxes, (2) the blanket mortgage, if any, on the property, and (3) reserves for future operating costs, major property renovations, and other property needs.[90]

As previously mentioned, cooperative owners pay carrying charges to jointly pay for the costs of operating the property. Cooperative owners thus bear the financial risk of each cooperative owner's willingness and ability to pay his or her carrying charges to protect the cooperative's financial stability. This inter-reliance is similar to condominium owners' inter-reliance in that a condominium is only able to remain financially stable if each condominium owner pays his or her monthly condominium fee. However, condominium fees pay the condominium association's operating expenses and reserves; these fees do not pay the mortgages on owners' condominiums. As such, a condominium owner's individual unit is not directly at risk if other condominium owners in the building do not pay their monthly fees. Housing cooperative carrying charges are different. Carrying charges not only pay the cooperative's operating expenses and reserves, but also the blanket mortgage on the

89. NAT'L ASS'N OF HOUS. COOPS., *supra* note 78, at 86.
90. NAT'L CONSUMER COOP. BANK, *supra* note 76, at 3.

cooperative property. As such, if one or more cooperative owners fails to pay carrying charges, each cooperative owner's residence is at risk if the blanket mortgage falls into default from non-payment.

There is a persuasive argument that such inter-reliance is beneficial to low- and moderate-income cooperative owners.[91] As mentioned above, the cost of routine home maintenance is a struggle for many low- and moderate-income homeowners. Cooperatives enable homeowners to bear the cost of home repair and upkeep together. This diversification of risk of non-payment minimizes the risk of default on the cooperative's expenses and mortgage.

C. Housing Cooperative Approval of New Members

Another distinguishing factor in a housing cooperative is the process by which a new buyer becomes a cooperative member. In a condominium, a prospective condominium buyer generally is able to become an owner in the condominium association by executing a purchase contract for the condominium unit with the condominium owner, qualifying for a mortgage to purchase the condominium, and closing on the unit with a settlement attorney. However, with a cooperative, the cooperative's board of directors must also approve a prospective buyer.[92] A cooperative board often requires all prospective applicants to pass a credit and criminal background check, and requires prospective applicants to meet with the board of directors prior to becoming a member in the cooperative.

This process has prompted some applicants to complain of discriminatory treatment, particularly in the high-end, market-rate cooperatives in New York.[93] However, this feature is often a benefit

---

91. Kirkpatrick, *supra* note 69, at 7.

92. NAT'L CONSUMER COOP. BANK, *supra* note 76, at 3.

93. *See, e.g.*, Iver Peterson, *As Co-ops Spread, Discrimination Concerns Grow*, N.Y. TIMES, Feb. 25, 1990, *available at* http://www.nytimes.com/1990/02/25/realestate/as-co-ops-spread-discrimination-concerns-grow.html?pagewanted=all&src=pm. While a cooperative board of directors has the right to interview, approve, and disapprove applicants, such review process is subject to federal and state fair housing laws prohibiting discrimination in housing for specified protected classes. *See generally* Rosemarie Maldonado & Robert D. Rose, *The Application of Civil Rights Laws to Housing Cooperatives: Are Co-ops Bastions of Discriminatory Exclusion or Self-Selecting Models of Community-Based Living?*, 23 FORDHAM URB. L.J. 1245 (1996).

to limited equity cooperatives. Interviewing applicants allows low- and moderate-income residents the ability to exert some control over their externalities, such as excluding neighbors with criminal backgrounds or low credit scores, or those who cannot demonstrate the ability to pay or willingness to contribute to the joint care of the property. Residents in rental units, particularly those in low- and moderate-income neighborhoods where the landlords might not feel the pressure for resident selectivity, would not otherwise have been able to maintain a level of exclusivity in selecting their neighbors.

D. Types of Housing Cooperatives.

Generally, there are two major types of housing cooperatives: market-rate cooperatives and limited equity or limited-income cooperatives (LECs).[94]

1. Market-Rate Cooperative

A market-rate cooperative is a type of housing cooperative that has no restrictions on the income of the residents who live in the cooperative or on the resale value of the cooperative. This type of housing cooperative most closely resembles a condominium. The market-rate cooperative, common in New York City,[95] typically allows the cooperative owner to sell the cooperative share to a new buyer for whatever price the market will bear.[96] The market-rate cooperative owner is also allowed to sell the cooperative share to a new buyer without requiring the new buyer to meet maximum income requirements.[97]

---

94. NAT'L ASS'N OF HOUS. COOPS., *supra* note 78, at 85. It is common for "limited equity cooperative" and "limited-income cooperative" to be used interchangeably. There are distinctions between the two, which are discussed briefly in this Article. However, for ease of discussion, the term "LEC" will be used to reference both.

95. *Id*.

96. FED. HOME LOAN BANK BD., *supra* note 85, at 5.

97. *Id*.

2. Limited Equity Cooperative

The term limited equity cooperative refers to limited-income housing cooperatives and limited equity housing cooperatives. A limited-income cooperative is a housing cooperative that has restrictions on the maximum income of the cooperative owners. These restrictions are designed to preserve the cooperative units for low- and moderate-income residents. A limited equity cooperative restricts the amount of equity appreciation, or the resale price above the owner's purchase price, that the cooperative owners may obtain upon resale of the cooperative share. The owner's equity is often determined by a pre-agreed formula reflected in the cooperative's bylaws. This formula often limits the cooperative owner's equity appreciation to a flat amount, such as fifty or 100 dollars, or a maximum percentage increase, such as 3 percent over the purchase price.[98] In addition to the equity appreciation, limited equity cooperative owners might also be entitled to adjust their sales price upward for inflation, plus any pre-approved costs incurred by the cooperative owner in upgrading the owner's unit.[99] The over-arching intended benefit of an LEC is to preserve the property's affordability by ensuring the cooperative share price does not increase to a level unaffordable to future low- and moderate-income buyers.

E. History of Housing Cooperatives

While there is a longer history of housing cooperatives in Europe, the first cooperative housing project in the United States, known then as a "home club," was the Randolph, built in 1876 on West Eighteenth Street in New York.[100] In "A Brief History of Cooperative Housing," Richard Siegler and Herbert Levy note that a home club was "a joint stock company, the stockholders of which were entitled to long-term leases of apartments within the building owned by the

98. *Id*.

99. POLICYLINK, LIMITED EQUITY HOUS. CO-OP 1, 5, *available at* http://www.policylink.org/atf/cf/{97c6d565-bb43-406d-a6d5-eca3bbf35af0}/limited%20equity%20housing%20co-op.pdf.

100. Richard Siegler & Herbert J. Levy, *Brief History of Cooperative Housing*, COOPERATIVE HOUSING J. 12, 14 (1986).

company."[101] Like current day housing cooperatives, "[t]he leases were transferable only to parties acceptable to other members of the club."[102] However, unlike current housing cooperatives, only 40 to 50 percent of occupants owned the home club, while "the other occupants rented, and their rents paid for most of the maintenance of the entire building."[103]

According to Siegler and Levy, the first cooperative apartments were designed for higher-income residents seeking the benefits of homeownership without the responsibilities of maintaining a home.[104] At this time, multi-family properties more often took the form of rentals rather than cooperatives; however, housing cooperatives returned to prevalence during the 1920s.[105]

The housing cooperatives in the 1920s were no longer reserved for wealthy residents exclusively but instead were designed for working class residents as well.[106] During this time, many of the LECs were "sponsored by unions and built in New York City."[107] As cooperatives grew in popularity, the number of cooperatives increased in New York, but also expanded to Chicago, Detroit, Philadelphia, and San Francisco.[108] The financial onslaught of the Great Depression saw a number of housing cooperatives close down, with over 75 percent of housing cooperatives in Chicago and New York going under by 1934.[109] While most of the limited equity cooperatives sponsored by unions survived the Great Depression, many of the luxury cooperatives did not.[110]

Cooperative housing returned in popularity after World War II. The economy had begun to rebound, and inner city workers required more housing.[111] Cooperative housing developers also shifted the legal structure of cooperative housing. Instead of requiring owners to

101. *Id*.
102. *Id*.
103. *Id*.
104. *Id*.
105. *Id*.
106. Siegler & Levy, *supra* note 100, at 14.
107. NAT'L ASS'N OF HOUS. COOPS., *supra* note 78, at 85.
108. Siegler & Levy, *supra* note 100, at 15.
109. *Id*.
110. NAT'L ASS'N OF HOUS. COOPS., *supra* note 78, at 85.
111. Siegler & Levy, *supra* note 100, at 16.

sign ninety-nine year proprietary leases, developers offered short-term leases, allowing owners to return the housing stock to the cooperative if the owner was unable to resell it.[112]

Currently, there are 6,400 housing cooperatives in the United States. Of the over one million dwelling units, 775,000 are market-rate cooperative dwelling units, and 425,000 are LEC dwelling units.[113] According to the National Association of Housing Cooperatives, housing cooperatives account for about 1 percent of all housing units.[114] More than half of the existing housing cooperatives are in New York City, and most of those are market-rate cooperatives.[115] Cooperatives also exist in Chicago, Atlanta, Detroit, Miami, Kansas City, Washington, D.C., and San Francisco.[116] Cooperative housing continues to grow, not only with the support of state governments and non-profits, but with federal support as well. The Department of Housing and Urban Development's (HUD) Office of Multifamily Housing Development administers § 213 of the National Housing Act, which insures mortgage loans provided by HUD-approved lenders against loss on mortgage defaults for the construction, rehabilitation, and purchase of housing cooperative projects.[117]

IV. THE NON-ECONOMIC VALUE OF HOMEOWNERSHIP

As is true for many Americans, I long viewed homeownership as a means of equity appreciation. My idea of homeownership was challenged when I began working in affordable housing many years ago, helping tenant associations purchase their apartment buildings, renovate those apartment buildings, and convert them to some form of homeownership.[118] One of my first clients was a group of residents

112. *Id*.
113. NAT'L ASS'N OF HOUS. COOPS., *supra* note 78, at 85.
114. *Id*.
115. *Id*. at 86.
116. *Id*.
117. *Mortgage Insurance for Coop. Housing: Section 213*, U.S. DEP'T HOUSING & URBAN DEV., http://www.hud.gov/offices/hsg/mfh/progdesc/coop213.cfm (last visited Mar. 26, 2013).
118. D.C. CODE §§ 42-3401–42-3405.13 (2001). *See generally* Julie D. Lawton, *Tenant Purchase as a Means of Creating and Preserving Affordable Homeownership*, 20 GEO. J. ON POVERTY L. & POL'Y 55 (2012).

who purchased their twelve-unit apartment building approximately fifteen years prior to working with me and, given the option of converting their property to homeownership, converted the property to an LEC instead of a condominium. Curious about why the residents converted the property to an LEC, I asked about it, *knowing* there must have been a barrier to the residents converting to an LEC instead of converting to a condominium.

The residents explained one of the reasons they converted the property to an LEC was that their lender, the D.C. Department of Housing and Community Development, supported this form of ownership as a means of preserving the affordability of the Washington, D.C., housing stock, and offered very favorable loan terms to tenant groups who converted their properties to LECs. The residents also explained that they did not convert the property to a condominium because they did not have the income and credit qualifications to obtain the individual mortgages each would need to purchase a unit in the converted condominium.

At the time of our conversation, a balloon payment on the property's initial fifteen-year blanket mortgage was due, and we began working together to refinance that loan and to redevelop the property with additional proceeds from the refinance. Four of the units in the property were vacant, and the residents wanted those new units occupied with new cooperative owners. Confident in my assumption that given the opportunity to choose between an LEC and a condominium, a duly informed person would clearly choose a condominium, I took it upon myself to evaluate the residents' options to determine how they could convert their existing LEC into a condominium, then buy their existing units and sell the vacant units to new buyers.

After many hours of evaluating their options, I proudly informed the residents that we would be able to convert the property from the LEC to a condominium. In addition, because the existing blanket mortgage on the property was so small and the renovation costs relatively inexpensive, we could complete the renovations to the vacant units and sell them to new buyers at a price below comparable units in the area. And, most importantly, to me at least, the existing residents would be able to purchase their condominiums either at no cost or at a cost of no more than about $10,000 to $20,000 per owner.

The residents listened intently to my explanations, asked a few pertinent questions, and said they wanted to think about these issues and discuss amongst themselves. A few days later, the residents informed me that, despite the potential for significant financial gain if they converted to a condominium, they were choosing to remain an LEC. Perplexed, I reminded them that in a condominium, residents were not as interdependent on one another. They patiently explained that the interdependency was one of the traits of homeownership they valued. I reminded them that in a condominium, the residents would be able to sell their units at a price significantly higher than the price they would pay for their unit. They patiently explained that financial gain was not the primary concern for their choice in housing. I reminded them that in a condominium, the residents would be able to easily bequeath their unit to their heirs. They explained that a building where residents do not have the interdependency of a cooperative was not a dynamic they wanted to give to their children. I then reminded them that in a condominium, the residents would own real property instead of owning a share in a cooperative, which is personal property. They explained that owning a home where they are comfortable, where the residents know and trust one another, and where the residents must, by virtue of the ownership structure, work together to rise or fall together was much more important than the ownership structure. The cooperative form of ownership was, to my surprise, their preference and informed choice. The residents viewed homeownership as a means of providing non-economic benefits that were of greater value to them than financial gain.

As previously mentioned, one of the reasons homeownership has been promoted for low- and moderate-income residents is for wealth creation. And the idea of homeownership for many is to own fee simple real property. However, because LECs restrict equity appreciation and are personal property and not real property, it can be argued LECs are not “real homeownership” but merely a rental under a different name. This last part of the Article examines the non-economic benefits of homeownership to support the argument that LECs are an equal form of valued homeownership and should not be viewed as anything less.

A. The Meaning of Home

We, as a society, often equate property ownership with monetary value. The initial value of a home is directly related to how much money is paid for the home. Society has implicit understandings of the value of property for which we pay significant sums of money and from which we can make significant sums of money. However, beyond the ability to make a profit purchasing a home for investment value, what is the meaning of homeownership, and what is the rationale for residents purchasing a home, such as an LEC, where there is no opportunity for wealth creation?[119]

Legal scholar Margaret Radin seems to view homeownership in non-economic, personal terms. Professor Radin argues our homes are an extension of our personhood—the personhood of property.[120] Radin suggests our homes can become so embodied in ourselves that our homes become an element of personhood, something no longer entirely external to the person.[121] She argues, "Our reverence for the sanctity of the home is rooted in the understanding that the home is inextricably part of the individual, the family, and the fabric of society."[122] If this is true, and I agree that it is, "home" or even the concept or meaning of "homeownership" is not solely or even primarily an economic evaluation. Home is not determined by how much one pays for a home or how much equity appreciation one can obtain from a home. Home creates an extension of oneself, so that the absence of financial profit does not negate the value of ownership.

In defining the "personhood of property," Radin posits a person needs a sense of "continuity of self" over time.[123] This sense of continuity gives us a frame of reference, and is created in direct relation to external factors, including objects and things. According to Radin, we, as individuals connected to these things, are more

119. There has been a fair amount of research completed on the benefits of LECs, much of which was compiled by Susan Saegert and Lymari Benítez in a 2005 article. *See generally* Susan Saegert & Lymari Benítez, *Limited Equity Housing Cooperatives: Defining a Niche in the Low-Income Housing Market*, 19 J. PLANNING LIT. 427 (2005).

120. Radin, *supra* note 47, at 958.

121. *Id*. at 991–992.

122. *Id*. at 1013.

123. *Id*. at 1004.

attached to the discreet items than the items in the aggregate.[124] It follows, she argues, that the sense of continuity that a person creates in relation to external things becomes broken when our discrete items are taken or lost. For example, a stolen sofa creates more of a break in the continuity than the theft of a sum of money.[125] Replacing a white sofa, she says, with a blue sofa does not provide the same sense of continuity as replacing a stolen $500 with another $500.

Money is fungible; discrete, personal items are not. One can argue the loss of the home is significant not because of the loss of the house itself but because of the loss of the discrete items in the home. The loss is compounded when many discrete items are all lost at once along with the loss of the home. Replacing the lost home with another home filled with replicas of many of the same items still creates a break in the continuity. This loss of continuity is often seen when residents lose their homes to natural disasters; consider the images of residents picking through the rubble, searching for personal items lost in their homes. Replacing one lost home with another home does not provide the same level of continuity. This theory carries over to the meaning of home. A person's continuity of self is connected to a person's home, and this connection is not reliant on the home's value or the amount of equity appreciation in the home.

In contrast, legal scholar Stephanie Stern argues there is little evidence to support the theory that a person's home is a special object that constitutes psychological personhood.[126] Stern questions what she calls "residential protectionism"—the legal priority and protection given to homeownership to the detriment of ownership of other real and personal property.[127] Stern argues against the idea that residential property, or the home, is deserving of such broad protections. In fact, Stern goes so far as to say that the loss of one's home can be traumatic, not because of the validity of the loss but because property law has created a false sense of connection to the home.[128] Stern argues against the "sanctity" bestowed on residential

---

124. *Id*.
125. *Id.*
126. Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093 (2009).
127. *Id*. at 1094–95, 1099–1100.
128. *Id*. at 1096 ("Moreover, the mythology of home and residential protectionism are self-

real estate as unsupported by psychological and sociological evidence.[129] Citing Clare Cooper's book *The House as Symbol of Self*, Stern argues, "Possessions, even subjectively important ones, do not form the principal tiers of self or identity."[130] In contrast to Radin's proposition that one's home is so closely aligned with the self as to become a part of one's personhood, Stern argues that other factors, such as "personality characteristics, values, social roles, and one's body parts" are the "conceptual categories most closely linked with self."[131]

One problem with Stern's analysis is that a home, as opposed to a house, is not often viewed by its owners as merely a possession. It is important in considering these issues to differentiate a "house" from a "home" and from "homeownership." An apartment can be a house and a home, but never homeownership. An apartment where one lives in college, which is intended as a temporary residence, is a house. When that person graduates from college and moves to New York to live in an apartment where he or she will reside for the next ten years, that apartment can become that person's home. If that person's apartment building is converted to a cooperative or a condominium, and that person purchases the unit, that person's tenure changes to homeownership.

A house is a legal and personal possession. However, a home's meaning to a person encompasses much more than the house as a physical structure or an economic investment. Stern's analysis appears to discount this distinction. For homeowners, the idea of homeownership goes beyond the home simply as a physical structure. Homeownership is closely aligned with other factors, such as accomplishment, self-worth, stability, and a place to raise a family.[132]

---

perpetuating. If property law treats the loss of home as the amputation of one's very identity and ability to thrive, then owners are likely to construe dislocation as a dire event.").

129. *Id*. at 1098–99 ("Rather, I maintain that the sanctity bestowed by American property law on one category of private property, residential real estate, is not warranted based on the psychological and sociological evidence.").

130. *Id*. at 1110.

131. *Id*.

132. *See* Elizabeth Warren, *The Economics of Race: When Making It to the Middle Is Not Enough*, 61 WASH & LEE L. REV. 1777, 1785, 1787 (2004).

It is neither solely a financial investment for equity appreciation or wealth creation nor just a possession, as Stern seems to argue.

Much of the research evaluating the meaning of homeownership speaks specifically in terms of a house rather than a home. Housing "takes on the meaning of a home for its occupant largely because of the attributes identified by social scientific research."[133] However, the legal understanding of "home" is more amorphous. Lorna Fox argues this is due to the mostly subjective qualities of "home" and the difficulties legal scholars have in quantifying the value of "home."[134] According to Fox, these factors present obvious impediments to the development of a coherent legal concept of "home."[135] Because "home" is not easily quantifiable, the value of a home is not easily proven.[136] Fox sums up the research on the meaning of home into five sets of values: (1) home as a financial investment; (2) home as a physical structure; (3) home as territory; (4) home as identity; and (5) home (especially the owned home) as a cherished socio-cultural indicator.[137]

B. Homeownership as Financial Investment

As mentioned previously, the federal government and public policy have promoted homeownership as a means of wealth creation and financial stability. Homeownership structures, such as LECs, that restrict equity appreciation do not appear to follow this proposition. Economic theory argues a rational actor will seek the highest return on investment given an acceptable level of risk, particularly when investments have experienced a period of high returns.[138] The LEC

---

133. Megan J. Ballard, *Legal Protections for Home Dwellers: Caulking the Cracks to Preserve Occupancy*, 56 SYRACUSE L. REV. 277, 287 (2005).

134. Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?*, J.L. SOC'Y, 580, 581 (2002).

135. *Id*.

136. *Id*.

137. O'Mahony, *supra* note 53, at 176.

138. Marius Jurgila & Kevin J. Lansing, *Housing Bubbles and Homeownership Returns*, FED. RESERVE BANK S. F. (June 25, 2012), http://www.frbsf.org/economic-research/publications/economic-letter/2012/june/housing-bubbles-homeownership-returns/.

model clearly violates this rule. So why would otherwise rational actors choose a limited-return investment?[139]

Given the absence of equity appreciation in LECs, the question follows as to why residents would choose to buy an LEC given the choice of an alternative ownership structure, such as a condominium. One easy and potentially likely answer is that low- and moderate-income residents have so few options for homeownership. The challenges of poor credit, down payment, and low income make homeownership unattainable for many low- and moderate-income residents. A homeownership option, like the limited equity cooperative, that does not require a large down payment or require qualifying for a mortgage is an attractive alternative.[140]

Economists have argued there are two main purposes of homeownership. The first is housing as a utility, or for consumption, and the second is housing as an investment vehicle.[141] As a utility, the home provides housing services, the demand for which is driven by household characteristics such as the number of people in the household, the presence of children, and household income and wealth.[142] As an investment vehicle, the home provides a financial return, and the demand for such a return relates to the household's diversity of investments, the competitiveness of the returns on those investments, and the household's tolerance for investment risk.[143] Each homeowner assumes the financial cost of ownership. The financial costs include carrying costs such as taxes, insurance, maintenance, and financing costs, which are offset by the owner's anticipated equity appreciation in the home.[144] These carrying costs,

---

139. There is an argument, presented by Professor Max Huffman, that LEC owners are not forced into a lower return investment on homeownership because they are unable to purchase an alternative form of homeownership, but that LEC owners are simply choosing an investment with a lower return in exchange for an investment with a lower risk. Investments with lower returns often also offer lower risk. LEC owners could be potential homeowners seeking a low-risk, low-return annuity investment in real estate.

140. FED. HOME LOAN BANK BD., *supra* note 85, at 3.

141. Drew & Herbert, *supra* note 28, at 2 (citing J.V. Henderson & Y.M. Ioannides, *A Model of Housing Tenure Choice*, 73 AM. ECON. REV. 98 (1983); Y.M. Ioannides & S.S. Rosenthal, *Estimating the Consumption and Investment Demands for Housing and their Effect on Housing Tenure Status*, 76 REV. ECON. & STAT. 127 (1994)).

142. *Id*.

143. *Id*.

144. *Id.* (citing H.S. Rosen, *Housing Decisions and the U.S. Income Tax: An Econometric*

which economists argue are part of the financial analysis of homeownership, are then compared to the cost of renting a comparable house or apartment, taking into consideration the missed financial returns from investing any net equity appreciation from the sale of a home in another investment, and the risk of future rent increases.[145]

LECs are not completely without financial gains for owners. Limited equity cooperatives, as distinguished from limited-income housing cooperatives, are frequently structured to restrict only equity appreciation, but not the income of the owners. Thus, it sometimes occurs that moderate-income residents, whose incomes increase during their tenure in the LEC, continue to reside in the property even after the resident's income no longer warrants affordable housing.[146] For the resident whose income increases, the imputed "extra" income from having housing costs as a lower percentage of the resident's income is a means of equity appreciation. The "extra" disposable income that such a resident retains could be used to build a savings net in place of equity. While this is laudable since the goal of sustainable affordable housing is met, the goal of affordable housing is undermined since affordable housing does not remain with those who are most in need financially.

Property ownership, including housing cooperative ownership, provides owners with the proverbial "bundle of sticks" or bundle of property rights that the owners would not have in a rental property. As Vermont Associate Justice Denise Johnson explains, "The bundle of rights metaphor was intended to signify that property is a set of legal relationships among people and is not merely ownership of 'things' or the relationships between owners and things."[147] In

Analysis, 11 J. PUB. ECON. 1 (1979); Patric Hendershott, *Real User Costs and the Demand for Single-Family Housing*, BROOKINGS PAPERS ON ECON. ACTIVITY (1980)).

145. *Id*. (citing T.M. Sinai and N.S. Souleles, *Owner-Occupied Housing as a Hedge Against Rent Risk*, 120 Q. J. ECON. 763 (2005)) (also delving into the tax benefits of homeownership, including that mortgage interest is deductible and that most capital gains are not taxable).

146. Housing is considered "affordable" if no more than 30 percent of a resident's income is allocated to housing costs. *Affordable Housing*, U.S. DEP'T HOUSING & URBAN DEV., www.hud.gov/offices/cpd/affordablehousing/index.cfm (last visited Aug. 17, 2012).

147. Denise R. Johnson, *Reflections on the Bundle of Rights*, 32 VT. L. REV. 247, 249 (2007).

describing the bundle of rights, Justice Johnson references the 1960s essay by A.M. Honore listing eleven incidents of ownership: (1) the right to possess, (2) the right to use, (3) the right to manage, (4) the right to the income, (5) the right to capital, (6) the right to security, (7) the power of transmissibility, (8) the absence of term, (9) the prohibition of harmful use, (10) liability to execution, and (11) residuary character.[148] LEC owners, despite owning personal property and not real property, exercise these incidents of ownership; they would not have the benefits of such were they merely tenants of a landlord.

C. Home as a Physical Structure and Territory

1. Home as Physical Structure

Another way to consider the meaning of homeownership for LEC owners is to contemplate the utility value—or the lack of exchange value—of their homes. Owning a home without the goal of equity appreciation suggests an LEC has more of a utilitarian value to the LEC homeowner than a home purchased primarily for investment. Since LECs have very little, if any, exchange value, the value to their owners is primarily, if not exclusively, utilitarian. In other words, an LEC has more "use-value" than "exchange-value."[149]

There is a distinction between use-value and exchange-value.[150] Consider the example of a coat made by a tailor. Whether it is the tailor or the customer who wears the coat, the coat has "use-value."[151] For hundreds of years, humans produced clothes whenever the need for clothing arose, without the need for "exchange-value" commodities. For example, this occurred when humans killed animals and used their skins for warmth and covering, or used woven textiles produced for the user by the user.[152] A similar argument can be made for the creation of housing. For many years housing was

148. *Id*. at 253.
149. KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 1–7 (Frederick Engels ed., Samuel Moore & Edward Aveling trans., 1906).
150. *Id.*
151. *Id.*
152. *Id.*

purely for utilitarian purposes, whether it was a cave or tents of the nomads; housing was made by the user for the user, solely for its "use-value"—in this case, as shelter.

Consider the argument that "[w]hoever directly satisfies his wants with the produce of his own labour, creates . . . use-values, but not commodities."[153] We value commodities because of their exchange-value. It is a reflection of our capitalistic society that articles with exchange-value, when exchanged for a profit, allow us to acquire more commodities. And the acquisition of commodities with greater and greater exchange-values leads to the accumulation of wealth. LECs are not commodities. They have significant use-value but very little exchange-value.

LECs are not purchased for equity appreciation; by definition and intent, LECs prohibit significant equity appreciation. The purpose of LECs is to provide homeownership to residents who might otherwise not be able to afford homeownership, and to facilitate homeownership for residents who, without an LEC, would be priced out of affluent neighborhoods. LECs are also designed to preserve this affordability for successive buyers, to enable them to have the same benefits. These purposes are inherently utilitarian and provide more of a use-value to the owner than exchange-value.

Consider the owner of a condominium with the goal of equity appreciation and the owner of an LEC. Arguably both have utilitarian purposes of homeownership. But the owner of the condominium also seeks an investment to accumulate wealth or a commodity for exchange value. The LEC owner seeks solely to fill her utilitarian need for shelter. Since both have their basic utilitarian purposes satisfied, the LEC owner arguably has the same non-economic value as the investor-owner. But, unlike the investor-owner, the LEC owner's utilitarian goal of "home as shelter" is accomplished without the need for or risk of investment.

153. *Id.* at 7.

2. Home as Territory

When thinking of homes as territory, a significant challenge presented by LECs, or any type of affordable housing, is the decreased mobility inherent in homeownership, particularly low-income homeownership.[154] LECs, while providing a sense of permanence for owners, might also prevent low-income homeowners from relocating to communities that have fewer of the negative pathologies found in many low-income neighborhoods.[155]

While the pathologies of low-income communities are well established, LECs can also prevent low-income owners from being forced out of their neighborhoods into even worse neighborhoods. Low- and moderate-income residents frequently suffer financial instability. This financial instability often leads to geographic instability when residents lose their housing, are displaced, or are forced to relocate to housing that is more affordable. LECs, because they are affordable housing, can provide more housing stability for residents, even if the neighborhoods in which the LECs are located might be less desirable to many.[156]

A low-income neighborhood's pathologies do not connote an absence of value. Studies of residents' connection to public housing neighborhoods rampant with crime, drugs, and gang behavior show that, despite these factors, residents still experience a sense of connection and community that they value.[157]

D. Home as Identity

LECs also provide owners personal value through positive personal feelings such as higher self-esteem. Moreover, LECs provide social value by allowing owners to be viewed with greater

154. Rohe et al., *supra* note 56, at 386 (citing Daniel D. Luria, *Wealth, Capital, and Power: The Social Meaning of Home Ownership*, 7 J. INTERDISC. HIST. 261 (1976)).

155. *See* Stern, *supra* note 126, at 1117 (presenting a sociological perspective on low-income homeownership and arguing that owning a home in a low-income neighborhood can lead people to feel more trapped by high exit costs than liberated by the stability and autonomy touted by more affluent homeowners).

156. Please note not all LECs are located in low-income neighborhoods.

157. *See, e.g.*, Griff Teser et al., *Sense of Place Among Atlanta Public Housing Residents*, 88 J. URBAN HEALTH: BULL. N.Y. ACAD. MED. 436 (2011).

esteem by others. LECs also provide financial value, since they are designed to allow low- and moderate-income residents to pay a reasonable portion of their income toward housing costs. Finally, LECs provide continuity value by creating stability for residents who are able to remain in the LEC without the fear of a landlord refusing to renew a lease or possibly selling the property.

The homeownership values of LEC owners might be similar to the attachment that public housing tenants have for their long-term apartment rentals. Studies and interviews have shown that for public housing residents, the connection to a long-term apartment as a "home" is not about the economic return or potential investment value. Instead, the connection is about that sense of "home," the sweat equity invested, and the feelings of identity, ownership, community, and control that many tenants did not have before.

Public housing residents have fought vigorously against displacement and relocation for years. For example, in Chicago's Plan for Transformation,[158] public housing residents and advocates attacked the Chicago public housing authority's attempt to disperse public housing residents throughout the city using housing choice vouchers.[159] Residents bemoaned the loss of their homes, their community, their sense of belonging, and their neighborhoods.[160] This potential loss of public housing apartments terminated that sense of continuity that Radin argues is inherent in personhood.[161] Like these public housing tenants, LEC owners receive a similar sense of continuity and identity, which underscores the value of homeownership for them.

John Locke has said, "every Man has a Property in his own Person," from which it follows, "The Labour of his Body, and the Work of his hands . . . are properly his."[162] Further, Marx has theorized that because an article's value is dependent on that article's

158. *The Plan for Transformation*, CHI. HOUSING AUTH., http://www.thecha.org/pages/the_plan_for_transformation/22.php (last visited Sept. 25, 2013).

159. VOICES OF CABRINI GREEN: REMAKING CHICAGO'S PUBLIC HOUSING (Ronti Bezalel, 2007), *available at* http://ronitfilms.com/films/voicesofcabrini.html.

160. *Id.*

161. *Id.*

162. Radin, *supra* note 47, at 965 (quoting J. LOCKE, SECOND TREATISE OF GOVERNMENT (New York 1952) (6th ed. London 1764) (emphasis omitted)).

labor time, the more productive (efficient) the labor, the less valuable the article.[163] When we apply these theories to LEC ownership, it is arguable that because LEC governance encourages, and almost requires, more personal investment than other forms of homeownership, it is therefore a more valuable form of ownership.[164]

LEC owners, on the whole, have less money and resources than more affluent owners with greater access to homeownership.[165] As such, to purchase into an LEC, the LEC owner must work to negate the barriers that low- and moderate-income residents face to homeownership, thus creating a greater sense of identity and value for the LEC owner.

E. Home as Socio-Cultural Indicator

It should not go without saying that homeowners might perceive the LEC's "homeownership value" differently because it is personal property and not real property.[166] This difference in perception creates a difference in social value because the home is a cherished socio-cultural indicator.[167] Real property has historical significance to us. It is real, tangible. Real property for much of history was the exclusive domain for the very affluent. It has long symbolized wealth, power, control, and accomplishment. This significant "social value" matters when considering the homeownership value of LECs.

Yet this difference in social value does not diminish the homeownership value for LEC homeowners. Studies have noted the

---

163. MARX, *supra* note 149, at 48–54.

164. LYMARI BENÍTEZ & SUSAN SAEGERT, CITY UNIV. OF N.Y. GRAD. CTR. FOR THE TACONIC FOUND., LIMITED EQUITY COOPS.: A REVIEW OF THE LITERATURE 10–11 (2003) (describing how the standard of living at LECs benefited from increased "social capital" or the interconnectedness and interdependency of residents).

165. Thomas J. Miceli et al., *The Role of Limited-Equity Cooperatives in Providing Affordable Housing*, *in* 5 HOUSING POL'Y DEBATE 4, at 487 (Fannie Mae Pub., 1994).

166. "As etiquette maven Emily Post noted in 1930, this [housing cooperative] status occupied a shaky middle ground that she called 'tenant owner.' Residence in 'any communal dwelling,' she opined, 'is beset with far greater danger than is possible to one who merely buys a house.'" In short, she concluded, "those of limited funds and inexpert knowledge should avoid even approaching—just as a mouse should avoid approaching the cheese in a trap." Lawrence J. Vale, *Ideological Origins of Affordable Homeownership Efforts*, *in* CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP 27 (William M. Rohe & Harry L. Watson, eds., 2007).

167. O'Mahony, *supra* note 53, at 176.

social benefits of LECs. A 1994 study by Miceli, Sazama, and Sirmans analyzed the role of LECs in the housing market.[168] The study's authors "argued that LECs help to reduce externalities such as noise, socially disruptive neighbors, and residents' wear and tear on the housing."[169] LECs also help reduce management costs when residents participate in the management of their properties.[170] LECs are sought by low-income residents who "value a low level of housing externalities and are willing to devote their efforts to reducing them by self-management."[171]

A second 1994 study by Helene Clark showed LEC residents were "able to shape their residential environments and their way of life according to their own goals to a much greater extent than can occur in the absence of collective ownership."[172] In 1996, researchers Susan Saegert and Gary Winkel noted LEC residents' sense of empowerment from participating in a collective.[173] Another study, in 1997, by Ruth Rae, suggested that residents benefited from the cooperative nature of LECs.[174] In that study, residents referenced the benefits of shared financial planning and decision making with other residents in similar financial situations.[175] Lastly, in a 2003 study by Saegert and others, residents noted that LECs provided them greater control of their housing, lower housing costs, and an ability to live in a neighborhood they would not otherwise be able to afford.[176] These benefits of LECs provide a potent counter to any perceived difference in social value.

---

168. Saegert & Benítez, *supra* note 119, at 429 (citing Thomas J. Miceli et al., *The Role of Limited Equity Cooperatives in Providing Affordable Housing*, 5 HOUSING POL'Y DEBATE 469 (1994)).

169. *Id*.

170. *Id*.

171. *Id*.

172. *Id.* at 430 (citing Helene Clark, *Taking Up Space: Redefining Political Legitimacy in New York City*, 26 ENV. PLANNING 937 (1994)).

173. *Id*. (citing Susan Saegert & Gary Winkel, *Paths to Community Empowerment: Organizing at Home*, 24 AM. J. COMMUNITY PSYCHIATRY 517 (1996)).

174. Saegert & Benítez, *supra* note 119, at 429 (citing Ruth Rae, *Ownership and Equity: Perceptions of Ownership by Low-Income Owners of Limited Equity Co-operative Housing* (1997) (unpublished Ph.D. dissertation, City University of New York)).

175. *Id*.

176. *Id*. (citing Susan Saegert et al., *Limited Equity Co-ops as Bulwarks against Gentrification* (Mar. 28, 2003) (paper presented at Urban Affairs Association conference)).

An additional social value of LEC ownership is privacy. While the right to privacy is not absolute in an LEC, it is certainly greater than the right to privacy when a resident is a renter. As a renter, a resident does not have the exclusive right of entry. Such exclusivity is restricted to a homeowner who can exclude, with some exception, any and all who seek to enter. A renter is frequently required to allow the landlord and the landlord's agents, including brokers, potential renters, and maintenance personnel, access to her home. The right to privacy that comes with an LEC would otherwise be denied to renters, particularly to low- and moderate-income residents who are often disempowered by the housing markets.

CONCLUSION

This Article seeks to articulate why LECs, despite the low financial investment value and the lack of direct financial return, constitute a valuable form of homeownership for LEC owners. LECs fulfill utilitarian purposes for owners, provide owners a sense of control, create higher self-esteem, and provide the sense of continuity that scholars have argued is so important to a person's sense of self.

There are many critics of LECs. Some complain LECs are too similar to a rental property. These critics argue that when LEC owners are not heavily involved in the management and supervision of their property, the management company—which ostensibly works for the owners—will not only manage the property but also manage it in a manner that resembles a landlord's management of a rental property.[177] This has led to claims that LECs are no more than "glorified rentals."[178] Beyond that, the restricted equity structure of the LEC has caused some to argue that the absence of wealth creation

177. Kim Skobba & Ann Ziebarth, *Empowerment in Leasehold Cooperatives and Its Influence on the Member/Management Relationship*, 29 HOUSING AND SOC'Y 13 (2001), *available at* http://www.housingeducators.org/Journals/H&S_Vol_29_No_1&2_Empowerment_in_Leasehold_Cooperatives_and_Its_Influence_on_the_Member_Management_Relationship.pdf.

178. JOHN E. DAVIS, NAT'L HOUS. INST., SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUS. 183 (2006), *available at* http://www.nhi.org/pdf/SharedEquityHome.pdf; DEWEY BANDY, UC DAVIS CTR. FOR COOPS., CHARACTERISTICS & THE OPERATIONAL PERFORMANCE OF CA'S PERMANENT HOUS. COOPS. (1993), *available at* http://www.cccd.coop/files/Housing%20Co-op%20Performance.pdf.

negates one of the most important aspects of homeownership, particularly for low- and moderate-income residents.

This Article is in defense of LECs. Many believe LECs are not "true" homeownership because they do not provide an economic return and are "less than" fee simple ownership; this Article argues that while financial return may fuel a person's desire to purchase a house, it is not an integral part of what makes a person's housing purchase a home. People often buy homes with the hope of equity appreciation. But the lack of equity appreciation, particularly over the past few years following the housing bubble, may impact a resident's evaluation of whether the home purchase was a good investment. It does not follow, however, that residents view their house any less as homes or any less as an act of homeownership. Financial return might fuel the desire to own, but there are personal values, less related to economic investment, that convert one's house into a home.

LECs should continue to serve as a resource for affordable housing advocates and as a sense of pride and accomplishment for the residents who own them. And, in case you are wondering, that LEC I mentioned earlier that resisted conversion to a condominium—it happily remains a cooperative, more than twenty-five years after its initial conversion.