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PARADISE UNFOUND: THE AMERICAN DREAM OF HOUSING JUSTICE FOR ALL

DEBORAH KENN*

“Justice, justice thou shalt pursue.”
— *Deut. 16:20*

I. INTRODUCTION

A quiet revolution occurs daily in the affordable housing market. This revolutionary experience happens family by family, house by house, street by street, throughout the nation. Slowly, low-income communities take control of the housing within their neighborhoods and change the way people in the community relate to property. Families without the financial resources to buy into the “american dream” of single family homeownership find ways to pool resources and work collectively toward controlling secure and stable housing. This collective ownership of property enables low-income families to use property indefinitely. Alternative forms of property ownership also ensure that housing remains available to low-income individuals by allowing the community to safeguard the future affordability of the housing. Understandably, the revolution has both advocates and critics. The advocates emphasize the genius of this grass roots effort to create permanently affordable housing for low-income communities by adapting age-old legal structures to accomplish its purpose.¹ 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. Municipal officials, bankers, lawyers and funding sources help not-for-profit housing developers use these innovative legal structures to successfully develop housing that will remain permanently affordable.

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My work for this article is dedicated to my parents, Lester J. Kenn (1916-1992) and Marion Kenn (1921-1994). Between the two of them they taught me all the important stuff. My fortunate birth to Lester and Marion provided me with opportunities in life everyone should have.

¹ See generally INSTITUTE FOR COMMUNITY ECONOMICS, THE COMMUNITY LAND TRUST HANDBOOK 18-35 (1982).

However, the creation of permanently affordable housing does not come without costs. First of all, along with addressing the problem of long term affordability, the not-for-profit housing development that gained headway in the last ten years perpetuates the problem of racial and economic housing segregation endemic to most cities in the United States. By infusing scarce government housing dollars into central cities and revitalizing neighborhoods which are predominantly low-income, the not-for-profit housing development sector condemns families with low incomes to life in the ghetto, albeit a rehabilitated ghetto.

Secondly, the legal structures used to preserve affordability for the long term rely on a resale formula which limits the profit available to the owner upon sale of the housing. Restricting the equity low-income people can enjoy upon resale of their housing, while failing to place the same restrictions on middle or upper-income home sellers, drastically reduces their ability to participate equally in the housing market. Thus, critics argue that equity controls for low-income people create a second class form of homeownership.

After describing the current and persistent problems of housing affordability confronting low-income communities, this article will detail the innovative legal mechanisms used by not-for-profit community organizations to develop permanently affordable housing for low-income families. The political and social consequences of these alternative forms of property ownership for low income communities will then be explored. This article discusses a redefinition of property rights and a reconceptualization of land distribution with alternative property ownership as a solution for the affordable housing problem. With equality and justice as goals, the diversity of racial and economic integration will be achieved through collective action, regional discourse and community property.

II. THE PROBLEM OF UNAFFORDABLE HOUSING

Although the federal government attempted for fifty years to develop a cohesive national housing policy that addresses the causes of homelessness,² it consistently failed.³ The revolution in low-income housing development occurs at the grass roots level as a direct result of such ineptness.

Many families cannot afford a decent home.⁴ Affordability affects all economic levels: those wanting to upgrade to a larger home; those seeking to purchase their first home; renters wanting a decent place to rent; and those

² Housing Act of 1949, Pub. L. No. 81-171, § 2, 63 Stat. 413 (1949).

³ RUTGERS CENTER FOR URBAN POLICY RESEARCH, *The Historical Context for Housing Policy, in FEDERAL HOUSING POLICY & PROGRAMS: PAST & PRESENT*, (J. Paul Mitchell ed., 1985), 3, 4.

⁴ Some argue that housing quality has improved, even for low-income renters. E.g., John Charles Boger, *Race and the American City: The Kerner Commission in Retrospect—An Introduction*, 71 N.C. L. REV. 1289, 1331-32 (1993).

persons trying to avoid or escape homelessness.⁵ Low-income people remain the hardest hit, as the cost of housing, maintenance, utilities, and taxes preclude them from entering the marketplace.⁶ The economic gap between people who are able to succeed in the housing market and those who are unable to get a foothold is rapidly increasing.⁷ Thus, "the problems confronting low-income households appear to be worsening even as over-all housing conditions are brightening for all Americans."⁸

The current income gap between low-income and high-income is at its highest level since World War II.⁹ This widening gap in income levels has caused housing costs to out-pace income for many low-income Americans.¹⁰ From 1970 to 1989 the market for low-rent and low-cost housing contracted substantially. The number of rental units costing \$250 or less in 1989 dollars declined from 6.8 million to 5.5 million units, a decrease of nearly 20%.¹¹ At the same time, the number of people in need of low-rent units increased, thereby causing the gap between the supply and the market demand for low-rent units to change from a 400,000 unit surplus in 1970 to a 4.1 million unit deficit in 1989.¹² Thus, as income levels have decreased for those families already in the lower economic strata, the supply of available and affordable low-cost housing has decreased.

These marketplace conditions have had many deleterious results. For example, "the predominant cause of the worst homelessness epidemic since the Great Depression is increasing poverty in the face of a decreasing supply of low cost housing."¹³ Others remain precariously on the brink of homelessness, clinging to what they can afford, while those who have housing are forced to pay an ever increasing percentage of their monthly incomes for rent or other housing related costs.¹⁴

⁵ Michael Allan Wolf, *HUD and Housing in the 1990s: Crises in Affordability and Accountability*, 18 FORDHAM URB. L.J. 545, 549 (1991).

⁶ See Carol F. Steinback, *The Hourglass Market*, 22 NAT'L J. 568 (1990).

⁷ *Id.* (quoting a representative of the National Association of Home Builders).

⁸ *Id.* at 570.

⁹ NATIONAL COALITION FOR THE HOMELESS, PRACTISING L. INST., *THE CLOSING DOOR: ECONOMIC CAUSES OF HOMELESSNESS* (1992).

¹⁰ Ellen L. Bassuk, *Homeless Families*, SCI. AM., Dec. 1991, at 66; see JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION'S HOUSING 1994*, 11 (1994) [hereinafter JOINT CTR. FOR HOUSING].

¹¹ LOW INCOME HOUSING INFO. SERV., CTR. ON BUDGET AND POLICY PRIORITIES, *A PLACE TO CALL HOME: THE LOW INCOME HOUSING CRISIS CONTINUES 3* (1991) [hereinafter LOW INCOME HOUSING INFO. SERV.].

¹² *Id.* at 4; see JOINT CTR. FOR HOUSING, *supra* note 10, at 14 (low-income households have increased from nine million in 1974 to thirteen million as of 1993).

¹³ Barbara Sard, *Housing the Homeless Through Expanding Access to Existing Subsidized Housing Programs*, PRACTICISING L. INST., Jan. 22, 1992.

¹⁴ Wolf, *supra* note 5, at 550-51; see also JOINT CTR. FOR HOUSING, *supra* note 10, at 3 (in 1993 renters paid an average of 30.9% of their income on gross rents, the second highest percentage recorded since 1967).

If existing supply and demand trends continue, by the beginning of the twenty-first century, 17.2 million low-income households will seek inexpensive rental apartments, but only 9.4 million rental apartments will exist.¹⁵ Based on the national average of 2.4 persons per household, this statistic implies that 18.7 million Americans will be unable to find housing they can afford.¹⁶ Individuals and families able to afford a home must allocate an ever-increasing portion of their monthly income to cover rent and other housing costs. Although rental vacancies have risen, gross rental rates, having barely recovered from their 1987 peak, remain high.¹⁷ Many households are forced to pay up to 70% of their monthly income for rent, typically leaving them with as little as \$100 a month for all other needs.¹⁸

The exact number of homeless individuals in the United States is unknown. Estimates vary from between a low of 192,000 to 300,000¹⁹ to a high of 1.5 to 3 million.²⁰ Families account for thirty-four percent of the homeless population,²¹ with those headed by women constituting the fastest growing population of homeless people. An estimated 61,500 to 100,000 children sleep on the streets, in shelters, or in abandoned buildings or cars nightly.²² Such deprivation profoundly affects those children, who also tend to be malnourished, fall behind their peers in school, suffer from low self-esteem, and have mental and emotional developmental problems.²³ Growing up homeless fuels the cycle of poverty generation after generation.

Further, there are an estimated four to seven million Americans considered precariously housed²⁴ or "pre-homeless." The "pre-homeless" are people who are on the verge of homelessness because of lack of affordable housing and are soon to "cross the narrow divide between shelter and the streets."²⁵ These people often live doubled up with relatives or friends in overcrowded spaces that

¹⁵ Wolf, *supra* note 5, at 550-51; see JOINT CTR. FOR HOUSING, *supra* note 10, at 13 (low-income housing units have decreased at a rate of 130,000 units per year over the past six years).

¹⁶ Wolf, *supra* note 5, at 550-51.

¹⁷ JOINT CTR. FOR HOUSING, *supra* note 10, at 3; Wolf, *supra* note 5, at 550.

¹⁸ NATIONAL COALITION FOR THE HOMELESS, PRACTISING L. INST., *supra* note 9; see JOINT CTR. FOR HOUSING, *supra* note 10, at 17 (extremely low-income renters receiving no housing subsidies: although there is structurally adequate housing, 2.7 million people pay 50% or more of their incomes in rent).

¹⁹ U.S. DEPT. OF HOUSING AND URBAN DEV., OFFICE OF POLICY DEVELOPMENT AND RESEARCH, A REPORT TO THE SECRETARY ON THE HOMELESS AND EMERGENCY SHELTERS 32 (1984); see CHRISTOPHER JENCKS, THE HOMELESS (1994).

²⁰ John J. DiIulio, Jr., *There But For Fortune - The Homeless: Who They Are and How to Help Them*, NEW REPUBLIC, June 1991, at 28.

²¹ Bassuk, *supra* note 10.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Curtis J. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U. MIAMI L. REV. 315, 321 (Nov. 1990/Jan. 1991).

lack amenities such as hot or cold water, toilets, showers, bathtubs and electricity.²⁶

Several factors contribute to the decreasing market of affordable housing. Over the last two decades, construction of new public housing essentially came to a standstill.²⁷ Reagan era policies phased out virtually all Section 8 subsidies for rental housing construction and curtailed tax incentives for private builders of low-cost homes.²⁸ Additionally, increased gentrification of neighborhoods and the conversion of apartments to condominiums have contributed to a loss of single room occupancy and other rental units.²⁹ Further, many landlords found it unprofitable to comply with local codes and ordinances. This noncompliance led to an increase in abandoned and poorly maintained buildings.³⁰

A large number of the private low-income housing units lost to market forces were built using short term federal subsidies beginning in the 1950's and 1960's. Approximately 3.9% of the units lost and 19.2% of the remaining units are in a high state of disrepair and lack adequate cash flows to make repairs.³¹ In addition, an estimated 1,150 projects are expected to have their second mortgages come due between the years 1997 and 2000.³² If owners are unable to pay off their notes, these projects will be at risk of foreclosure.³³

Apparently, the federal government will not expand existing Housing and Urban Development (HUD) funded programs or create new ones to provide the additional level of relief needed. Scarce federal funds must be used to support existing HUD programs and bail out failed programs. Thus, any extended budget authority that is granted will be needed to defray the continued costs of assistance to families already aided by HUD.³⁴ Section 8 contracts issued in the 1970's for a period of fifteen years are beginning to expire and \$7 billion of HUD's \$25 billion budget for 1993 is expected to be spent on renewals alone.³⁵ This cost is expected to grow to \$15 billion by 1997.³⁶ Renewal of Section 8 contracts benefits only those persons currently living in Section 8 housing; it does not confer any additional benefits to others, nor does

²⁶ LOW INCOME HOUSING INFO. SERV., *supra* note 11, at 8.

²⁷ Berger, *supra* note 25, at 321; see JOINT CTR. FOR HOUSING, *supra* note 10, at 15.

²⁸ See Steinbach, *supra* note 6.

²⁹ Berger, *supra* note 25, at 321-22.

³⁰ DiIulio, *supra* note 20, at 33; see JOINT CTR. FOR HOUSING, *supra* note 10, at 15.

³¹ *A Report of the National Income Housing Preservation Commission, Preventing the Disappearance of Low Income Housing: Hearings Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Finance and Urban Affairs*, 100th Cong., 2d Sess. 481 (1988).

³² *Id.*

³³ *Id.*

³⁴ Jason DeParle, *Big Bills Coming Due at H.U.D., Crimping Expansion of Programs*, N.Y. TIMES, Apr. 8, 1993, at A1.

³⁵ *Id.* at D20.

³⁶ *Id.*

it directly increase the availability of low-income rental units.³⁷

The poor condition of public housing is another problem that must be addressed. Federal housing resources are needed to rehabilitate existing public housing units that are in a high state of disrepair.³⁸ More than one-half of the public housing stock is in need of moderate or substantial rehabilitation at an estimated cost of \$20 billion dollars.³⁹

The high rate of foreclosures on Federal Housing Administration (FHA) insured mortgages is an additional drain on federal resources.⁴⁰ The FHA insures lenders against the default on residential mortgage loans for homeowners and developers. By September 1992, the FHA had lost \$6.8 billion as a result of charges against loan-loss reserves on multi-family mortgages.⁴¹ It is estimated that the FHA multi-family loss reserve is \$11.9 billion, 27% of the \$43.6 billion in FHA-insured multi-family mortgages currently outstanding.⁴²

Restrictive rules regarding HUD foreclosure and assignments further complicate the problem. These rules require that properties controlled or owned by HUD after foreclosure or assignment cannot be sold unless they have a fifteen year Section 8 project-based rental assistance contract.⁴³ There are not enough Section 8 funds to cover HUD's inventory of multi-family housing. Thus the inventory cannot be sold.⁴⁴ This shortage costs the federal government \$14 a day in holding costs per unit, a total of \$254 million in costs in 1992.⁴⁵

The cumulative effect of the foregoing could have disastrous consequences. As the costs of homelessness and affordability continue to rise, the federal government will be forced to expend more and more money just to preserve currently existing programs and house the families currently being assisted.

Other impacts on the affordable housing industry were the savings and loan crisis and changes in the tax code. These factors caused the desirability and profitability of investment in real estate to change dramatically. The Tax Reform Act of 1986⁴⁶ was the culmination of a decade of mood swings in tax regulation. After thirty years of a fairly stable tax code and twenty years of a growing and stable real estate tax shelter industry, the rules changed three times between 1981 and 1986. The 1981 tax code changes liberalized the

³⁷ *Id.*

³⁸ LOW INCOME HOUSING INFO. SERV., *supra* note 11, at 57.

³⁹ *Id.*

⁴⁰ Carl Horowitz, *National Issue*, INVESTORS BUS. DAILY, July 15, 1993, at 1. See also OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP'T. OF HOUSING AND URBAN DEV., U.S. HOUSING MARKET CONDITIONS 52 (1994).

⁴¹ Horowitz, *supra* note 40, at 1.

⁴² *Id.* at 1.

⁴³ HUD Concerned About Multifamily Losses, Will Seek Legislation to Facilitate Property Sale, HOUSING & DEV. REP. (BNA) at 110, (July 5, 1993).

⁴⁴ *Id.*

⁴⁵ *Id.* at 101.

⁴⁶ Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986).

rules:⁴⁷ cutting rates,⁴⁸ providing investment tax credits,⁴⁹ and speeding depreciation losses from 40 to 15 years.⁵⁰ Depreciation write-offs on real estate investments increased from 2 ½% to approximately 6% per annum.⁵¹ Then, from 1981 to 1986 the rules were tightened, and in 1986 the rules changed so drastically that much real estate was no longer a financially prudent investment.⁵² Tax shelters, (which provided incentives for operating rental properties at a loss,) and depreciation deductions were gutted.⁵³ Investors found themselves needing income-producing property and increasing rents to cover shortfalls.

At the same time, the government's slow reaction to the savings and loan crisis caused many banks to fail. When the government did respond, it overreacted by freezing junk bond portfolios and precipitating a shrinking of wealth. Real estate investment wealth, being tied to the savings and loans industry, was simultaneously devalued, and the diminished investment capital base resulted in very depressed areas. Real estate still remains extremely undesirable for many financial investors.⁵⁴

In 1949 Congress declared that a primary goal of the Housing Act was to provide "a decent home and a suitable living environment for every American family."⁵⁵ Unfortunately, this essential goal has gone unrealized. Today, the affordability gap between the haves and the have-nots in our nation is at its widest point.⁵⁶ Precipitated by a downturn in the economy, increased gentrification and an overall decrease in the availability of affordable housing, the demand for low-income housing has vastly out-paced the supply.⁵⁷

The costs of the available housing exceeds the ability of low-income families to pay rent, forcing many families to consistently live on the brink of homelessness or suffer the loss of their home. Mortgage interest rates are at the lowest point in two decades. Yet, in order for all Americans to truly benefit, increased federal funding will need to be augmented or reallocated to all those individuals and families in need of affordable housing. At a time when the federal government's budget for housing can barely support continuation of

⁴⁷ Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, (95 Stat.) 172 (1981) (codified as amended in scattered sections of 26 U.S.C.S.).

⁴⁸ 26 U.S.C.S. § 1 (1982).

⁴⁹ *Id.* at §§ 46-48.

⁵⁰ *Id.* at §§ 167-68.

⁵¹ *Id.*

⁵² See Schwartz, *Real Estate and the Tax Reform Act of 1986*, 16 REAL EST. REV. 28 (1987).

⁵³ *Id.*; see also 26 U.S.C.S. §§ 167-68.

⁵⁴ Interview with Christian Day, Professor of Law, Syracuse University College of Law, in Syracuse N.Y. (Oct. 26, 1994). The perspective on the tax code and the savings and loan crisis was made possible by the input and expertise of Professor Christian Day, respected colleague and learned economist.

⁵⁵ Housing Act of 1949, *supra* note 2.

⁵⁶ See JOINT CTR. FOR HOUSING, *supra* note 10, at 3-4.

⁵⁷ See *id.*

the current programs, the need for federal funds for housing increases. The major cause for this crisis can be traced to the shortsightedness of government programs and the numerous attempts by the government to solve a long term problem with short term solutions.

Several theories may explain the shortsighted approach of government funding for low income housing. Perhaps the government tends to be inherently shortsighted. Perhaps the government is prone toward funding low-income housing which benefits the wealthy.⁵⁸ Perhaps there exists a need in a capitalistic system for maintaining the status quo among the poor. Whatever the reason, during the past decade low-income housing organizations and advocates for low-income people have realized that the answer to the housing crisis must come from the grass roots. Through the efforts and creativity of small, local, not-for-profit corporations, the creation of permanent and affordable housing has become a reality.⁵⁹ With the assistance of government dollars channelled through local and state governments, not-for-profit corporations are developing housing and, more importantly, are having the foresight to develop legal structures that will maintain affordability of housing on a permanent basis. Slowly, the federal government is catching on to the importance of permanent affordability and is providing funding dollars for innovative programs.⁶⁰

However, the housing crisis will not be alleviated by money alone. Resources must be allocated to build or rehabilitate housing which will be available and affordable to low-income families. The crisis requires more than just creating affordable housing that will last for ten, twenty, thirty, or even forty years. It means changing conceptions of property and preserving the affordability of housing and land indefinitely. Long term solutions to the affordable housing crisis can be achieved only by disposing of the time clock. Funding for affordable housing is not effective in preserving low-income housing if structured as a shortlived tax shelter for high-income people or as a short term gain for low-income people. Traditional notions of property value must be rethought. Low-income housing created to benefit the community and controlled by the community will maximize the likelihood of maintaining affordability. Moreover, quality, affordable, owner-occupied housing generally leads to investment in schools, jobs, safe streets and safe neighborhoods.⁶¹ Until people control their lives by controlling their housing environments, the problem of ill spent dollars

⁵⁸ Michael H. Hoeflich and Robin Paul Malloy, *The Shattered Dream of American Housing Policy - The Need for Reform*, 26 B.C. L. REV. 665, at 662, 665, 690 (1985).

⁵⁹ Peter W. Salsich, Jr., *Nonprofit Housing Organizations*, 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 227, 232-3 (1989); David H. Kirkpatrick, et al., *Local Trends in Nonprofit Housing Production*, ECON. CENTER & LAW CENTER REP., Winter 1986, at 13; Peter Dreier, *Community-Based Housing: A New Direction in Federal Housing Policy*, *Shelterforce*, Sept./Oct. 1987, at 12.

⁶⁰ Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 1, 106 Stat. 3672 (1992); Louise A. Howells, *Economic Parity for Low-Income Cooperatives*, 17 URB. LAW. 31, 32-4 (1985).

⁶¹ Boger, *supra* note 4, at 1299.

for affordable housing will outlive the solutions. Community land trusts, limited equity cooperatives and mutual housing associations achieve these goals in varying ways.

III. CREATING AFFORDABLE HOUSING FOR THE LONG TERM

A. *Community Land Trusts*⁶²

In January of 1992, the state of Washington opened Morgantown, the state's first low-income housing project operated by a community land trust. The project is a seven-home complex located on the San Juan Islands, a vacation spot ninety miles north of Seattle in the upper Puget Sound. Financed through a variety of state and federal grants, including a Federal Community Development Block Grant, the project cost \$485,000 to complete. Volunteers and contractors built the seven houses, and families who qualified were able to purchase them for a down payment of \$1,000 to \$2,000.⁶³

The Morgantown project is designed to help low-income families obtain housing on the island. The average family income on the island is \$35,765, less than half of what is needed to purchase a house on the island. Many families are only able to rent housing throughout the winter; they must vacate it in the

⁶² It is interesting to note that community land trusts were given legislative definition for the first time in the Housing and Community Development Act of 1992, *supra* note 60, at 42 U.S.C.A. § 12773 (West 1994). Due to its historical importance it is worthwhile to reprint the definition in full:

(f) . . . the term "community land trust" means a community housing development organization . . .

(1) that is not sponsored by a for-profit corporation;

(2) that is established to carry out the activities under paragraph (3);

(3) that —

(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

(5) whose board of directors —

(A) includes a majority of members who are elected by the corporate membership; and

(B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.

42 U.S.C.A. § 12773(f) (West 1994).

⁶³ Melanie J. Mavrides, *Low-Cost Houses on a High-Price Island*, N.Y. TIMES, May 2, 1993, at § 8, p.1.

summer in favor of tourists and vacationers who are able to pay the higher rents. The Morgantown project enabled the operator of the local recycling center and his companion, who works in a gift shop, to move from the renovated barn in which they lived without electricity or running water to a 750 square foot house of their own. State subsidies reduce their monthly mortgage payment to \$320, and when they decide to sell their house it will be sold to another low-income family qualifying for the program.⁶⁴

As the name implies, community land trusts are created when a community wants to keep land in trust for its residents by legally severing the ownership of the land from the ownership of the buildings upon it.⁶⁵ The ownership of the land is retained by a "community" usually a not-for-profit corporation that is cooperatively controlled by community members who do not have any claim to the land, residents who do have a claim to the land, and various other interested parties (e.g., municipal officials, church representatives, funding source representatives).⁶⁶ To establish and maintain control within a community, the board of the corporation is usually comprised of a majority of community residents. The community land trust holds title to the land and grants long term leases to owners of the buildings on the land, enabling the community to control affordability of the buildings while providing individuals the opportunity for homeownership and the resultant security and stability arising from ownership.⁶⁷

The symbiosis between land trust and individual is evidenced from the initial purchase of land. When attempting a traditional home purchase, most low-income people are initially discouraged when applying for a bank mortgage.⁶⁸ From the start, the impeccable credit, sizeable downpayment and resources for closing costs necessary to qualify for a mortgage keep most low-income families out of the traditional homeownership market. When a community land trust applies for a mortgage to buy land, however, lenders examine the collective credit and resources of the corporation, not that of any one individual.⁶⁹ The prospective homeownership individual may need to apply

⁶⁴ *Id.*

⁶⁵ David M. Abromowitz, *Focus: Long-Term Affordability, Community Land Trusts and Ground Leases*, A.B.A. J. AFFORDABLE HOUSING & COMMUNITY DEV. L. Spring 1992, at 6.

⁶⁶ Christopher A. Seeger, Note, *The Fixed-Price Preemptive Right in the Community Land Trust Lease: A Valid Response to the Housing Crisis or an Invalid Restraint on Alienation?*, 11 CARDOZO L. REV. 471, 474 (1989).

⁶⁷ Abromowitz, *supra* note 65, at 5 (in the article Abromowitz states, "(t)he CLT as landowner is primarily interested in preserving housing stability and affordability rather than maximizing revenue from the land").

⁶⁸ AMERICAN BAR ASSOCIATION, REPRESENTATION OF THE HOMELESS PROJECT, FACTS AND FIGURES ON LENDING PRACTICES OF FINANCIAL INSTITUTIONS (May 1990).

⁶⁹ Chuck Matthei, *Community Land Trusts as a Resource for Community Economic Development*, FINANCING COMMUNITY ECON. DEVELOPMENT 99, 101 (Richard Schramm ed., 1981).

for a loan if buying a house from the community land trust, but the process becomes less intimidating and there is, realistically, less to be afraid of when being guided through the process by a community group which has experience working with lenders. Depending on the arrangement, residents of the community land trust may not even have to be concerned with conventional financing.⁷⁰

The community land trust purchases land, builds or rehabilitates houses or apartment buildings⁷¹ and selects the homeowners. The community land trust then enters into ground leases with the homeowners (individuals owning homes or corporations owning scattered-site housing and apartment buildings).⁷² The ground lease normally grants to the lessee most of the rights associated with homeownership, including a bequeathable use of the land (usually a 99-year renewable term).⁷³ Having a continuous right to the land satisfies all of the benefits and advantages of traditional homeownership. If the homeowner should want to sell the building, however, the overriding purpose of the community land trust becomes paramount. The ground lease protects the affordability of the housing. The community land trust extends the opportunity for homeownership to other low-income community residents at an affordable purchase price. The ground lease accomplishes this purpose in two interrelated ways. The community land trust retains a preemptive right of first refusal to purchase the building, and the resale value of the building is predetermined by the ground lease.⁷⁴

The lessee must give notice to the community land trust before selling the building and give the community land trust the opportunity to buy the building. Whether the community land trust avails itself of the buyback provision or the lessee sells the building on the open market, the purchase price is restricted by a resale formula contained in the ground lease.⁷⁵ Thus, affordability is controlled by the community land trust and availability of the housing to low-income purchasers is guaranteed.⁷⁶ Resale formulas are structured so that the homeowner receives a fair return of any money invested in the building. The purchase price on resale is usually determined by the origi-

⁷⁰ *Id.* at 105; see also Judith Bernstein-Baker, *infra* note 82, at 400; Stacey Janeda Pastel, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L. 293, 300 (1991).

⁷¹ INSTITUTE FOR COMMUNITY ECONOMICS, COMMUNITY LAND TRUST (CLT) ACTIVITY IN THE UNITED STATES (Feb. 1, 1993) (ICE stats: 67% rehabilitated (costing more than 10% of acquisition); 22% new construction; 10% no major construction)).

⁷² *Id.* (“[t]enure: 18% single family owned, 12% cooperative, 2% condominium; 25% rentals with intention to convert to ownership; 21% permanent rental (includes Single Room Occupancy units); 1% transitional; 19% vacant or under construction. In addition, there are 50 shelter beds.”).

⁷³ Abromowitz, *supra* note 65, at 6.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Seeger, *supra* note 66.

nal purchase price plus a limited amount of equity specified in the ground lease plus the value of any improvements the homeowner made to the building with the community land trust's approval.⁷⁷ "Thus, the land trust provides many of the attributes of home ownership, including some capital appreciation, while providing a mechanism to keep the housing permanently affordable."⁷⁸

Housing built on community land trust property remains affordable to low-income families since the operation of the ground lease effectively removes the housing from the external, unpredictable forces of the speculative real estate market. Although the possibility of a financial windfall for an individual is removed, the benefits of homeownership including a stable environment and secure housing remain. This advantage may be the reason that the community land trust movement in the United States has been growing astronomically in the past decade.⁷⁹ Development of a community land trust has been established as a proven method for providing permanently affordable housing to low-income families and for retaining control of housing resources within a community.

For example, in the 1960s, businesses and more affluent residents began to migrate out of North Camden, New Jersey, leaving the city to low-income Hispanic and African-American families facing limited economic opportunities. In the early 1970's, riots tore the community apart, leading many of those who had not already left to flee the area. Slowly a group of people began to organize in order to revitalize the neighborhood. They formed a group named Concerned Citizens of North Camden (CCNC). During the group's initial project of boarding up 300 abandoned, city-owned dwellings, the group identified houses which were in habitable condition and could easily be repaired. The CCNC developed a squatting program, encouraging thirteen families to move into the abandoned houses and initiate the necessary repairs under the guidance of the CCNC. Simultaneously, the CCNC began to organize a group of activists to defend the squatters against any action by the city. The CCNC was lucky. A newly elected mayor agreed to their proposals and provided the necessary funding so that by 1984 many of the boarded buildings were rehabilitated and occupied by 142 families. However, in 1984, the city cut its funding for the program in what some regarded as a retaliatory measure for the CCNC's opposition to locating a jail in North Camden. The CCNC began to focus its efforts on acquiring control over the land base in the city through the development of a community land trust. Viewed as a stabilizing measure to keep outside investors from purchasing all of the waterfront property, the CCNC was able to preserve land for rehabilitative purposes and to develop a neighborhood that had a feeling of community. Incorporated in December of

⁷⁷ Ronald C. Slye, *Community Institution Building: A Response to the Limits of Litigation in Addressing the Problem of Homelessness*, 36 VILL. L. REV. 1035, 1059 n.107 (1991).

⁷⁸ Slye, *supra* note 77, at 1059.

⁷⁹ INSTITUTE FOR COMMUNITY ECONOMICS, *supra* note 71.

1984, the North Camden Land Trust (NCLT) secured loans from organizations such as the Delaware Valley Community Reinvestment Fund. Through a sweat equity rehabilitation crew composed of neighborhood residents, the NCLT developed thirty-three homes and two eleven-unit permanent single-room occupancy housing areas for homeless people. The NCLT retains ownership of the thirty-three homes while allowing residents to build equity as members in a cooperative for monthly payments of \$265 or \$285 depending on the size of the home. Each family owns an interest in their own home and in the homes of everyone else.⁸⁰

B. *Limited Equity Cooperatives*

On New York's Lower East Side groups of men and women have been slowly renovating and rehabilitating abandoned tenements. Rehabilitation costs about \$550,000 per building. One-fifth of this amount comes directly from the city, and \$133,000 from the state of New York. The remainder of the financing comes from area churches, and other not-for-profit organizations. The Lower East Side Catholic Area Conference coordinates the funding and oversees the rehabilitation project.

Designed to rid the community of drugs and apartment developers trying to gentrify the area, this program is geared specifically to assist low-income families. Each of the prospective homesteaders, if able to, works on the various sites every Saturday for an average of two to three years. In addition, a group of students with disabilities from the Manhattan Vocational Training Center assists with the work, benefitting from the practical carpentry experience and the wages they are paid. It takes approximately eighteen months to renovate a building, each yielding four one-bedroom apartments with a monthly maintenance charge of \$210, four four-bedroom apartments costing \$420 per month, and eight two- and three-bedroom apartments costing \$270 and \$330 respectively. When the work is completed, the city will turn the title to the buildings over to the homesteaders, providing one share of stock in the cooperative corporation to each of the sixteen shareholders occupying apartments.⁸¹

The development of housing cooperatives with built-in resale restrictions on share values has also proven successful in creating and maintaining decent, affordable housing for low-income families. Typically, a cooperative corporation is formed which takes title to a building or buildings. Residents of the buildings buy shares in the cooperative corporation which provides the residents with ownership interests in the building. This arrangement provides people with the opportunity for an ownership interest in housing which may ordinarily be out of their reach. Since the cooperative corporation owns the building and arranges the financing for its purchase, low-income families with-

⁸⁰ *North Camden Land Trust—Putting the Pieces Together*, COMMUNITY ECON., Spring 1993, at 3-5.

⁸¹ George W. Goodman, 'Sweat Equity' Producing a Co-op on Lower East Side, N.Y. TIMES, Jan. 20, 1985, at R7.

out the resources or credit to qualify for a mortgage can participate in the "collective" credit of the cooperative corporation.⁸³

The ownership interest provides low-income families with stability and security in housing not enjoyed on the rental market.⁸³ "A resident has an exclusive right to occupancy of an apartment evidenced in both a shareholder's agreement and an occupancy agreement."⁸⁴ As long as these agreements are adhered to, the shareholder has control over the length of residency.⁸⁵ The ownership interest of the shareholder also conveys the right of participation in the management of the building. Although apartments may vary in size and the number of occupants, the general rule is one apartment, one vote.⁸⁶ From among themselves, the shareholders elect the Board of Directors which has decision-making power for the building.⁸⁷

As with community land trusts, there are trade-offs for ownership interests in cooperative housing. In developing cooperatives as affordable housing for low-income families, the duration of the affordability is often taken into account. The initial members of the cooperative impose resale restrictions on the shares. Shareholders receive a fair return on their investment, but they will not benefit (or be disadvantaged) by market fluctuations in the price of the share.⁸⁸ The return on investment is determined by a formula of either a flat percentage increase or an increase based on a consumer price or income index.⁸⁹ The formula also reimburses the shareholder for present value of improvements to the residence pre-approved by the Board of Directors.⁹⁰ Some limited equity formulas also take into account amortization of mortgage principal attributable to a specific apartment in determining the resale value of a

⁸³ Judith Bernstein-Baker, *Cooperative Conversion: Is it Only for the Wealthy? Proposals that Promote Affordable Cooperative Housing in Philadelphia*, 61 TEMP. L. REV. 393, 402 (1988); Simon, *infra* note 149, at 1364 ("[t]he cooperative form adds two important features to limited equity housing. First it creates an egalitarian mechanism for participation in the management of common facilities (or in the case of scattered site cooperatives, for the joint management of separate facilities). Second, it provides for the cross-collateralization of members' mortgage obligations . . . [t]his arrangement thus creates a fairly strong form of interdependence, as well as opportunities for a collective action").

⁸⁴ Howells, *supra* note 60, at 33.

⁸⁵ David H. Kirkpatrick, *Cooperatives and Mutual Housing Associations*, A.B.A. J. AFFORDABLE HOUS. & COMMUNITY DEV., Spring 1992, at 7.

⁸⁶ Bernstein-Baker, *supra* note 82, at 402.

⁸⁷ *Id.* at 396-97.

⁸⁸ Howells, *supra* note 60, at 34; *see generally* Bernstein-Baker, *supra* note 82, at 396.

⁸⁹ Bernstein-Baker, *supra* note 82, at 395.

⁹⁰ Kirkpatrick, *supra* note 84; Simon, *infra* note 149, at 1363 ("[t]he more exacting restraints limit the sale price to the amounts of the purchase price, plus any capital invested by the owner. A variety of intermediate standards have been used or proposed").

⁹¹ *Id.*

share.⁹¹ Finally, the board will typically retain the right of first refusal when a shareholder is selling his or her interest and will retain veto power over prospective shareholders.⁹² "The equity limitation formula usually reflects how each project balances the interests of individual members against those of future low-income residents, in an effort to assure long-term or even permanent affordability."⁹³

In addition to limiting the equity of the share prices, a cooperative must also limit corporate equity in the housing in order to assure long-term affordability.⁹⁴ If the corporate equity is not limited in some way, the cooperative corporation's shareholders could decide to sell the building at market rate and distribute the profits. To avoid this potential problem a charitable trust can be created to hold the property, restrictions on resale can be placed in the deed, the legal documents can be crafted to safeguard the sale of the building, or a community land trust can be created to hold title to the land underneath the building.⁹⁵

In Syracuse, New York Eastside Neighbors in Partnership, Inc. (E.N.I.P.) began buying houses on the city's lower east side in 1992. Home to many low-income families, the area was in danger of being gentrified due to proximity to Syracuse University and growth of medical complexes affiliated with university hospitals. E.N.I.P. established a community land trust and started acquiring property, rehabilitating houses and preserving green space on vacant lots adjacent to the houses. The one-, two- and multi-family houses are being rented to low-income families. In the near future, a cooperative corporation will be formed and each apartment dweller will become a shareholder. E.N.I.P. will transfer title to the buildings to the housing cooperative but will retain ownership of the land. Resale restrictions will be doubly protected by this arrangement, and the neighborhood housing should remain available to low-income families far into the future.

C. *Mutual Housing Associations*

Residents of West Main Street in Stamford, Connecticut have witnessed the transition of a troubled neighborhood. This transition occurred through cooperative work and concerted effort. The Mutual Housing Association (MHA) of Southwestern Connecticut, Inc. began buying property in the troubled neighborhood in 1988. The MHA actively sought resident involvement in the beginning stages of the process. Residents planned the homes to be built, developed strategies for working with funding sources and regulatory agencies, and cre-

⁹¹ Bernstein-Baker, *supra* note 82, at 401.

⁹² Howells, *supra* note 60, at 35; Simon *infra* note 149, at 1362.

⁹³ Kirkpatrick, *supra* note 84.

⁹⁴ DAVID H. KIRKPATRICK, THE NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, *Limiting the Equity in Housing Cooperatives: Choices and Tradeoffs*, ECONOMIC DEVELOPMENT AND LAW CENTER REPORT, (1981) 1.

⁹⁵ *Id.* at 8.

ated the organizational documents for the corporation. By 1992, the MHA had developed affordable housing for sixty-nine families. Through the residents' efforts, the neighborhood is becoming a safe and healthy environment.⁹⁶

Mutual housing associations (MHAs) are typically not-for-profit, tax exempt corporations organized to develop, own and manage housing for low- and moderate-income families.⁹⁷ Although MHAs operate mostly rental housing, they are designed specifically to encourage resident control and ensure permanently affordable housing. Resident control is accomplished by inclusion on the Board of Directors of the MHA. Usually, residents comprise a majority of the board, while the remainder consists of representatives from local business, state and local governments and community organizations.⁹⁸

IV. THE PROBLEMS WITH THE SOLUTIONS

The not-for-profit housing sector is somewhat new to the affordable housing development arena. Most noticeably, since 1980 "third sector housing," as it has been named by its proponents,⁹⁹ has taken on the Sisyphean task of creating decent, affordable housing for people with low incomes. After struggling to roll the rock up the hill, it is beginning to slip back down, weighted by burdensome bureaucracy with shallow pockets. Critics levy two major charges against third sector housing and the structures for permanent affordability being created by the not-for-profit sector. The first maintains that the not-for-profit housing sector continues the racist patterns of federal and state housing programs. The second criticism addresses the limits on equity build-up for low- and moderate-income homeowners and shareholders that work to maintain affordable housing. The American dream of homeownership is premised upon a significant return on investment and appreciation of housing dollars. Limiting the appreciation, therefore, limits a homeowner's ability to improve his own housing situation and generates a second class form of homeownership for the poor.

A. *Perpetuation of Housing Segregation*

One must have an historical perspective to understand the first criticism. Several well-documented historical accounts lead to the inescapable conclusion that the racial segregation prevalent in the United States today results from intentional, direct housing policies of the federal, state and local governments.¹⁰⁰ Governmental use of public improvement projects, i.e., redevelop-

⁹⁶ Diane Gordon, *Residents Make Mutual Housing a Success in Stamford*, SHELTERFORCE, May/June 1993, at 6-7.

⁹⁷ Kirkpatrick, *supra* note 84, at 7.

⁹⁸ Slye, *supra* note 77, at 1059-60.

⁹⁹ See generally, *Toward a Third Sector Housing Policy*, COMMUNITY ECON (1993).

¹⁰⁰ See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID* (1993); Boger, *supra* note 4; James A. Kushner, *Apartheid in America: An Historical and*

ment projects, public housing programs, and urban renewal, as a tool to accomplish racial segregation in cities dates back to the turn of the century when racial tension deepened because of competition for jobs and employers' use of African-American workers as strikebreakers.¹⁰¹ As African-Americans moved from the rural south to the urban north, geographic isolation of African-Americans in central cities took hold. From 1900 to 1940, the urban ghetto was created in many northern cities.¹⁰² Accomplished by violence, bombings, and government public works projects in the early 20th century, racial segregation soon became the business of local governments.¹⁰³ City councils, responding to the demands of the Caucasian middle class and the very real threat of violence, established segregationist zoning ordinances which divided city streets according to race.¹⁰⁴ When zoning restrictions were struck down by the U. S. Supreme Court, racially restrictive covenants between private individuals became the prevalent method for legally enforcing racial segregation.¹⁰⁵ Racially restrictive covenants which "ran with the land" isolated African-Americans in deteriorating neighborhoods of cities and separated African-Americans from almost all hope of decent, affordable housing.

Geographic separation of races intensified after World War II with the development of suburban communities miles removed from central cities. Middle-income Caucasians, both veteran and non-veteran, were encouraged to buy new housing in the growing suburbs by the enticement of no- and low-interest loans from the Veterans Administration and the Federal Housing Administration, respectively.¹⁰⁶ Both federal governmental agencies practiced overt acts of discrimination that enabled Caucasians to buy houses in the suburbs and prevented African-Americans from moving out of the central cities.¹⁰⁷ Government dollars built the infrastructure to provide utility, water and sewer service

Legal Analysis of Contemporary Racial Residential Segregation in the United States, 22 How. L.J. 547 (1979). This article will not try to replicate the excellent work of the cited authors. It will, however, give a brief synopsis of the history. The danger of being brief is oversimplification. Although some oversimplification is necessary, the reader is asked to overlook it for the sake of brevity in this section.

¹⁰¹ Kushner, *supra* note 100, at 559-560; see also HERBERT J. GANS, *PEOPLE, PLANS, AND POLICIES* 280-81 (Columbia Univ. Press 1991).

¹⁰² MASSEY & DENTON *supra* note 100, at 31 (racial isolation of African Americans in Chicago grew from 10% in 1900 to 70% in 1930; in Cleveland, from 8% to 51%; in New York, from 5% to 42%; in St. Louis, from 13% to 47%).

¹⁰³ *Id.* at 41, 56-57, 227 (the first city to pass an ordinance restricting residence based on race was Baltimore in 1910).

¹⁰⁴ Two examples of cities which still suffer the effects of zoning restrictions instituted in the 1930s are Buffalo and Yonkers, New York. Both cities have brutal histories of racial segregation which are evidenced today. See, e.g., *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1184-92 (2d Cir. 1987); *Arthur v. Nyquist*, 415 F.Supp. 904, 968 (W.D.N.Y. 1976). See also Kushner, *supra* note 100, at 562.

¹⁰⁵ Kushner, *supra* note 100, at 562; MASSEY & DENTON, *supra* note 100, at 36.

¹⁰⁶ Kushner, *supra* note 100, at 567.

¹⁰⁷ *Id.* at 567-68.

to the suburbs. As the interstate highway system was built with federal dollars, industry moved out to the suburbs. Decent housing, good jobs and quality education moved from the cities to the suburbs in a determined, rapid and enduring fashion leaving behind substandard housing, unemployment and an underfinanced educational system.¹⁰⁸

While the federal government was subsidizing "white flight" to the suburbs, it also began trying to act upon Congress' declaration in 1949 that the national goal should be "a decent home and suitable living environment for every American family." "Urban renewal" as it was so named, became the guise behind which city neighborhoods labelled as slums were bulldozed if they were too close to downtown business centers. As a result, low-income residential areas of cities became even more concentrated and centralized.¹⁰⁹ Segregation intensified as a result of "slum clearance."¹¹⁰

In 1963, President Johnson declared "War on Poverty," a legislative program developed during the Kennedy years to attack the roots of poverty.¹¹¹ Whatever view is held on the effectiveness of the specific programs instituted, the end result of the Kennedy-Johnson effort remains the same. The war was lost. In fact, in some respects, the programs exacerbated the problems of segregated neighborhoods. For example, the Model Cities program limited movement of central city inhabitants. Eligibility for social services benefits depended on residence within the Model Cities neighborhood.¹¹² The problems engendered by segregation and diversion of resources to suburbia and the resulting deterioration of conditions in the central city led to escalating frustration and hopelessness in the central cities. The most visible results of the despair of central city residents were the racial riots in the late 1960s.¹¹³ President Johnson's reaction to this cry for justice was to appoint the Kerner Commission to study the connection between the government's urban policies and racial discrimination.¹¹⁴ The Kerner Commission's stern warning after a year of study was clear and direct: "Our nation is moving toward two societies, one black, one white—separate and unequal . . . Discrimination and segregation have long permeated much of American life; they now threaten the future of

¹⁰⁸ Peter D. Salins, *Cities, Suburbs, and the Urban Crisis*, 113 THE PUBLIC INTEREST 91, 94 (Fall 1993) (the population of the suburbs grew 85% between 1950 and 1970. In that same time span, the population of central cities grew 19%); Kushner, *supra* note 100, at 573 n.56.

¹⁰⁹ Kushner, *supra* note 100, at 583-84 (interviewing Nancy Denton, Institute for Community Economics); John Edward Cribbet, *Concepts in Transition, the Search for a New Definition of Property*, 1986 U. ILL. L. REV. 1 (1986).

¹¹⁰ A concurrent problem was the ongoing and continuing segregationist patterns of public housing. There are several historical accounts of the insidious nature of public housing programs. *E.g.*, *Hills v. Gautreaux*, 425 U.S. 284 (1976).

¹¹¹ Boger, *supra* note 4, at 1291.

¹¹² Kushner, *supra* note 100, at 589.

¹¹³ *Id.* at 598.

¹¹⁴ Boger, *supra* note 4, at 1292.

every American . . . to pursue our present course will involve the continuing polarization of the American community and, ultimately, the destruction of basic democratic values."¹¹⁵ The Kerner Commission was also clear and direct in its recommendation on the course to take to avoid the calamitous direction in which the nation was headed; if the nation worked deliberately and proactively toward integration, the devastating effects of segregation for all of society could be avoided.¹¹⁶

Nixon's election to the presidency in 1968 delayed, if not destroyed, any possibility that the warnings of the Kerner Commission would be heeded. Over the next eight years the programs previously created to fight poverty were dismantled.¹¹⁷ The Housing and Community Development Act of 1974, passed under President Ford, held promise of starting to reverse the destructive trend. The Act created the Section 8 program,¹¹⁸ potentially allowing central city residents relocation opportunities within or without the city.¹¹⁹ Instead, implementation of the Section 8 program has actually reinforced the boundaries between suburbs and cities, black and white.¹²⁰ Another major shortcoming of the Section 8 program is its woefully inadequate ability to accommodate even a small percentage of those eligible for the program.¹²¹

The 1970s also saw the creation of the Community Development Block Grant (CDBG) program by the federal government. The CDBG program allocates funds to state and local governments for use in housing, social services

¹¹⁵ *Id.* at 1295 (quoting the Kerner Commission report).

¹¹⁶ *Id.* at 1302-03.

¹¹⁷ *Id.* at 1305.

¹¹⁸ 42 U.S.C.A. § 1437(f) (West 1994); Peter W. Salsich, Jr., *A Decent Home for Every American: Can the 1949 Goal Be Met?*, 71 N.C. L. REV. 1619, 1624 (1993) (recounting that "[a]t one time, four types of housing were eligible for Section 8 support: new construction, substantial rehabilitation, moderate rehabilitation, and existing housing." The last remaining Section 8 program is the existing housing program).

¹¹⁹ One of the HCDA's articulated goals was to reduce "the isolation of income groups within communities and geographical areas and the promotion of increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods." Housing and Community Development Act of 1974, Pub L. No. 93-383, Title I, § 104, 88 Stat. 638 (codified as amended at 42 U.S.C. § 5301(c)(6) (1994)).

The program envisioned portability of Section 8 "certificates" to privately owned units in an area of the certificate-holder's choice. See Chester Hartman, *A Universal Solution to the Minority Housing Problem*, 71 N.C. L. REV. 1557, 1564 (1993). Section 8 administrators, however, enforce the program with residence preferences perpetuating segregatory patterns. *E.g.*, *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181 (2d Cir. 1987); *Arthur v. Nyquist*, 415 F.Supp. 904 (W.D.N.Y. 1976).

¹²⁰ Kushner, *supra* note 100, at 582.

¹²¹ Salsich, *supra* note 118, at 1624 ("[s]candalously long waiting lists for embarrassingly few vouchers illustrate the Existing Housing program's failure to make a measurable impact on urban housing needs").

and community development programs. The theory behind this federal program postulated that localities and states knew best how funds should be spent.¹²² By allocating funds according to need and by restricting use to "revitalization areas" the CDBG program continues the racist practices of the federal government by maintaining the prevailing central city structure so necessary for segregation.¹²³ CDBG remains the cornerstone of federal funding for housing development, and clones of CDBG have been very popular in recent years.¹²⁴ The Cranston-Gonzalez National Affordable Housing Act of 1990 introduced the HOME program which was fashioned from the CDBG program.¹²⁵ The 1990 Act also created opportunities for public housing tenants to buy their apartments.¹²⁶

The private, not-for-profit sector assumed an integral role in spending government dollars for housing low-income people during the Reagan years.¹²⁷ Reagan and Bush spurred the not-for-profit sector to action by diminishing the government's role in housing development. As government dollars for affordable housing decreased (80% in the decade of 1980),¹²⁸ the role of the private sector increased.¹²⁹ Public funding utilized by the third sector was limited in amount and in scope. Rehabilitation of housing in deteriorated neighborhoods and new construction on vacant lots in revitalization areas were allowed under the funding programs.

State and local governments have reinforced the segregationist patterns of federal housing policy and funding over the years. "As the federal government was laying the economic foundation for the sprawling, suburbanized, metropolitan region, state governments devised the fiscal and jurisdictional arrangements which made sprawling metropolitanization functionally possible."¹³⁰ The growth of suburban communities was paralleled by the growth of local governments given the power under state law to regulate and control land use within its borders. The powers of local governments are used to maintain populations of people who look alike. Zoning ordinances, minimum lot and floor space requirements, maximum density limitations and a host of other

¹²² See Salsich, *supra* note 118, at 1622-23.

¹²³ Salins, *supra* note 108, at 98-99.

¹²⁴ The Public Health and Welfare Ch. 69, Community Development 42 U.S.C.S. § 5306 (1994) (Allocation and Distribution of Funds); Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C.S. § 12701 (1994).

¹²⁵ Salsich, *supra* note 118, at 1625.

¹²⁶ *E.g.*, The Homeownership and Opportunity for People Everywhere (HOPE) program. Salsich, *supra* note 118, at 1626.

¹²⁷ Dreier, *supra* note 59.

¹²⁸ Stacey Janeda Pastel, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L. 293 (1991).

¹²⁹ Joseph Shuldiner, *Stop Isolating the Poor: The Need for Economic Integration in Public Housing*, 2 A.B.A. J. AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT L. 17-18 (Fall 1992).

¹³⁰ Salins, *supra* note 108, at 97.

land use controls have served local communities' need for homogeneity.¹⁸¹ Since schools and municipal services are funded by property taxes, suburbs have enjoyed an expanding tax base while central cities see their coffers diminishing as the need for services increase.¹⁸²

The private real estate and banking industries have also served the Caucasian majority by discriminatory acts and practices which ensure the continuation of segregated communities. Although the banking industry has been taken to task in recent years with the passage of the Community Reinvestment Act, its mandate is to invest in historically low-income neighborhoods, not to affirmatively provide people choice in residential location.¹⁸³ And, although the Fair Housing Act cautions real estate agents against racial steering,¹⁸⁴ enforcement is on an individual basis and does nothing to attack the systemic causes of segregation.¹⁸⁵

Thus, the nation's legacy has bequeathed to us the lines of demarcation between races, between economic levels, and between cultures entrenched in society today:

. . . many of the nation's larger urban centers, especially in the Northeast and the North Central states, have retained the spatial characteristics sketched out in the Kerner Report: an older, declining central-city area surrounded by expanding, more affluent suburbs. As predicted, the populations of these central cities have become disproportionately black, Hispanic, and Asian, while suburban communities have remained disproportionately white.¹⁸⁶

The Kerner Commission both saw and foresaw the effects of housing segregation. The cycle of poverty created by the lack of opportunity in central cities is inescapable. Concentration of poverty, and the ensuing lack of jobs, adequate health care, decent housing and quality education that go with it, is a self-perpetuating cycle leading to powerlessness and despair.¹⁸⁷ Acceptance of the fact that societal forces responsible for racial segregation cause central city poverty as it is known today can break the cycle. A recognition of responsibility and implementation of structural changes that address the true causes are needed to find solutions to the cycle of poverty.¹⁸⁸

¹⁸¹ Kushner, *supra* note 100, at 592-94.

¹⁸² *Id.* at 605, 608.

¹⁸³ Community Reinvestment Act of 1977, Pub. L. No. 95-128, Title VIII, §802, 91 Stat. 1147 (codified as amended at 12 U.S.C.S. § 2901 (1994)).

¹⁸⁴ Fair Housing Act of 1968, Pub L. No. 90-284, § 3601, 82 Stat. 81 (1968) (codified as amended 42 U.S.C.A. § 3601 et seq. (1994)).

¹⁸⁵ MASSEY & DENTON, *supra* note 100, at 14.

¹⁸⁶ Boger, *supra* note 4, at 1310.

¹⁸⁷ *Id.* at 1299.

¹⁸⁸ MASSEY & DENTON, *supra* note 100, at 2-3. Eloquently stated by Massey and Denton, their analysis is worthy of repetition:

The effect of segregation on black well-being is structural, not individual. Residential segregation lies beyond the ability of any individual to change; it constrains

The number of people living below the poverty line is increasing.¹³⁹ The most concentrated poverty exists in central cities and the highest percentage of people living in central city poverty remain African-American.¹⁴⁰ The urban underclass created by racial and economic segregation disproportionately affects African-Americans.¹⁴¹ Although discrimination based on race of an individual is unconstitutional and illegal, discrimination against a race of individuals is practiced everyday in the United States.¹⁴² The conditions resulting from central city segregation and poverty—unemployment; dependence on public assistance; family instability; homelessness and housing vulnerability; inadequate education and health care; crime and violence—become the inheritance of generations unable to penetrate the societal and structural barriers of racial segregation.¹⁴³

To reverse the effects of housing segregation and the poverty engendered by the racist and discriminatory practices of governments in funding and developing housing is a difficult but important task. In 1968 the Kerner Commission warned that choosing to do nothing about racial segregation was to choose to suffer the consequences of intentional discrimination against a race of people in their access to housing, education and employment.¹⁴⁴ The magnitude and extent of the social ills facing urban America in 1994 painfully bring to life the warnings of the Kerner Commission.¹⁴⁵ Not only is nothing being done to reverse deliberate residential segregation, but government programs and public funding of affordable housing development are still intentionally allocated to perpetuate the segregation of people of color in central cities.

The final travesty is that the people and not-for-profit organizations working to improve living conditions for low-income people have become part of the problem. Working with limited government dollars targeted toward the revi-

black life chances irrespective of personal traits, individual motivations, or private achievements. For the past twenty years this fundamental fact has been swept under the rug by policymakers, scholars, and theorists of the urban underclass. Segregation is the missing link in prior attempts to understand the plight of the urban poor. As long as blacks continue to be segregated in American cities, the United States cannot be called a race-blind society.

¹³⁹ Boger, *supra* note 4, at 1315 (in 1991 the poverty rate was 14.2% with the demographic breakdown being 11.3% of Caucasians; 32.7% of African Americans; and 28.7% of Hispanics).

¹⁴⁰ *Id.* at 1316 (in 1985 the percentage of African-Americans living in central cities was 61%).

¹⁴¹ The implicit point should be emphasized: there are many successful, middle and upper income African-Americans; as well as many low income Caucasians. The urban underclass results from a culture of poverty as well as a legacy of racism.

¹⁴² See Ankur J. Goel, et al., *Black Neighborhoods becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker than Brown*, 23 HARV. C.R.-C.L. L. REV. 415 (1988) [hereinafter *Black Neighborhoods*].

¹⁴³ Boger, *supra* note 4, at 1293; Salins, *supra* note 108, at 93.

¹⁴⁴ Boger, *supra* note 4, at 1303.

¹⁴⁵ *Id.* at 1293.

talization of deteriorated neighborhoods, third sector housing developers become enablers in the persistence of housing segregation.¹⁴⁶ Some argue that the reliance on government dollars prevents not-for-profit housing developers from questioning the policies on how those dollars are spent.¹⁴⁷ Thus, the critics of third sector housing challenge those critiqued to examine the impact of community-based development when those communities being developed are segregated by race.

B. *Second Class Homeownership*

Another critique of not-for-profit housing argues that the resale restraints which function to maintain affordability of third sector housing also function as equity restraints for homeowners. The third sector has been criticized for creating homeownership for low-income people which is inherently second class. As stated by affordable housing expert and tenant advocate, Woody Widrow:

I think we have a major selling job if we want to convince tenants in private housing that they want something other than fee simple ownership. If advocates of third sector housing are going to win over tenants, they will have to show that it is not a second class alternative to traditional homeownership, that homeownership is not all it is made out to be—that there are some disadvantages to owning your own home—and that third sector housing has some special advantages of its own.¹⁴⁸

Many advocates consider housing-without-profit second class housing for the poor. This perception is illuminated by the realistic restriction of asset-building faced by owners of third sector housing. Most homeowners enjoy opportunity for economic advancement created by equity build-up in their homes. Although third sector housing provides opportunities for homeownership not available to many low-income people, it denies equity to those most in need of economic opportunity.¹⁴⁹ To some, third sector housing reflects the further ignominy which low-income people suffer in this country.¹⁵⁰ Every benefit afforded low-income people operates to keep the poor poor. For example, the welfare system penalizes people who work, go back to school, and try to maintain traditional family relationships.¹⁵¹

Third sector housing is yet another program devised to perpetuate the cycle

¹⁴⁶ See generally *Poverty Race and Third Sector Housing*, COMMUNITY ECON. (1994).

¹⁴⁷ See Goel, *supra* note 142, at 451.

¹⁴⁸ Woody Widrow, Institute For Community Economics, *Toward a Third Sector Housing Policy*, COMMUNITY ECON., Fall 1993, at 12.

¹⁴⁹ William Simon, *Social Republican Property*, 38 UCLA L. REV. 1335, 1363 (1991); Widrow, *supra* note 148.

¹⁵⁰ Charles A. Reich, *Beyond the New Property: An Ecological View of Due Process*, 56 BROOK. L. REV. 731, 738 (1990).

¹⁵¹ Kushner, *supra* 100, at 587.

of poverty. Defenders of third sector housing reply that the true values of homeownership include the security of long term residence, control over one's living environment, improved living conditions and community stability. For low-income people who have been victims of the private housing market's high rents and substandard conditions, the values of homeownership far outweigh any limit on profit.¹⁵²

Professor William Simon classifies third sector housing as "social-republican property" due to its layering of private ownership with participatory responsibilities and economic equality among owners.¹⁵³ He is not persuaded that an individual's interest in equity should prevail over the community's interest in maintaining affordable housing. He argues that creation of limited equity housing frequently combines private resources with public dollars. In order for the public subsidy to remain in the community it was established to assist, the subsidized housing must remain affordable to low-income residents. Further, there exists assumptions behind the criticism that may not be valid. One such assumption is that the selling homeowner continues to be low-income and wants to move to more expensive housing.¹⁵⁴

The defenders of third sector housing do not refute that it creates a second class form of homeownership. Rather, they seek solace in the achievement of loftier goals. Regardless, the conclusion remains that when homeownership is achieved through third sector housing programs, attainment of that goal signifies an economically different ownership interest than enjoyed by middle- and high-income people. A multitude of values may be attained, but economic equality remains elusive.

The question still persists: How can affordable homeownership become a reality for low-income people without the stigma, economic burden and lack of opportunity symbolized by second class citizenship and without housing planners perpetuating racial and economic segregation? The answer, though easily avoided by middle- and high-income America, should be apparent. The housing crisis is everyone's problem. The solutions need to involve everyone. Americans living in decent, affordable housing need to understand the social cost of ignoring people living in poverty.¹⁵⁵ Economic and racial segregation in housing and the poverty it perpetuates were deliberately created and continued. But it is time to cease finding or apportioning blame.¹⁵⁶ It is time for cooperative action to deliberately create equality and integration in housing.

¹⁵² Hartman, *supra* note 119, at 1567-68; Seeger, *supra* note 67, at 486.

¹⁵³ Simon, *supra* note 149, at 1336.

¹⁵⁴ *Id.* at 1363.

¹⁵⁵ Jeremy Paul, *Can Rights Move Left*, 88 MICH. L. REV. 1622, 1622 (1990) (reviewing JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* (1988)) (explaining Waldron's view as "that he fully recognizes that the rights of some impose duties on others, that rights often conflict, and that individual need must qualify claims of right").

¹⁵⁶ Reich, *supra* note 150, at 741, 744.

V. THE ULTIMATE SOLUTION: REDRESSING INEQUALITY

The evolution of the crisis in affordable housing grounds itself historically in the evolution of property rights. From the time white men landed on the continent, the right to property has reflected domination of the powerful over the vulnerable.¹⁵⁷ The racial segregation of minority groups and the economic segregation of low-income families is an historical outgrowth of the powerful's domination over the vulnerable. As stated by Professor Singer: "Nor is this lesson confined to American Indian nations. Black Americans, torn from Africa, placed in slavery, and then 'freed,' were never given the land, education, and other resources that had been available to many other Americans."¹⁵⁸ Denial of property rights to groups of people leaves races, classes and, until a relatively short time ago, genders vulnerable to the dominating power of the majority.¹⁵⁹

Property forms the basis of many benefits in society, including status and wealth. Property defines the chasm between the haves and the have-nots. The legacy of property distribution and property rights bequeaths to its benefactors an unjust system of racially and economically discriminatory property and wealth distribution.¹⁶⁰ By protecting individual property rights, the benefactors protect the inherent inequality in the discriminatory system.¹⁶¹

The conception of property rights which dominated throughout the early history of the nation is in transition.¹⁶² "The trend throughout the law is toward a greater recognition of the social side of property."¹⁶³ The struggle between an individual's self-interest in private property and the community's interest in affordable housing highlights the plight of the powerless. There are myriad examples of the recent priority given social control of property to balance the inequities in the private property system.¹⁶⁴ Redistribution of rights

¹⁵⁷ Joseph William Singer, *Legal Theory: Sovereignty and Property*, 86 Nw. U. L. REV. 1, 5 (1991) ("[M]ost of the real property in the United States was forcibly seized from American Indians by the United States government, and transferred to non-Indians for various purposes").

¹⁵⁸ *Id.* at 45.

¹⁵⁹ *Id.* at 40, 95.

¹⁶⁰ *Id.* at 48, 95.

¹⁶¹ Paul, *supra* note 155, at 1622; Marion Clawson, *Economic and Social Conflicts in Land Use Planning*, 15 NAT. RESOURCES J. 473 (1975) ("All of the foregoing is to say that land use planning and zoning at the local level in the United States—and that is the only level where significant amounts of such actions have been done in the past—has been in the hands of its beneficiaries.").

¹⁶² Cribbet, *supra* note 109, at 41.

¹⁶³ *Id.* at 40.

¹⁶⁴ The programs cited are not an endorsement of efficacy but an indication of intent. Critics from the right and left have problems with linkage programs, inclusionary zoning and rent control laws. Conservative economists regard the examples as inhibitors of development and destroyers of housing. The radical left views such programs as charity, not justice.

appear in the laws of landlord and tenant relationships including the warranty of habitability implied in residential leases,¹⁶⁵ and just cause eviction statutes.¹⁶⁶ Water and air rights¹⁶⁷ and environmental controls¹⁶⁸ demonstrate further concern for society's interest at the expense of an individual claim.

Linkage programs created in some cities (e.g., San Francisco) assert the primacy of social goals over individual interest. The municipalities involved in linkage programs require contributions by commercial developers to low-income housing either in the form of actual housing built or dollar donations.¹⁶⁹ The municipality of Mt. Laurel, New Jersey saw the equivalent of a linkage program imposed on it by the judiciary.¹⁷⁰ The court required each growing municipality in New Jersey to develop its fair share of low- and moderate-income housing.¹⁷¹

Rent control laws exemplify the protection of community property interests at the expense of an individual owner. The utilization of rent control laws as a response to the affordable housing crisis grows,¹⁷² while at the same time, its legality has withstood court challenges.¹⁷³ The emergence of property laws protecting the community's interest in land does not occur in a vacuum. A changing social context precedes the legal transition. A "search for community" characterizes modern times¹⁷⁴ and drives the legal emphasis on social interest in property. Theorists correlate the burgeoning development of intentional communities (i.e., condominiums and cooperatives) in recent history to the search for the self's interrelatedness with others.¹⁷⁵ The overwhelming individual isolation and alienation of modern culture necessitates the pendulum swing to the discovery of interrelatedness based upon a correlative value system.¹⁷⁶ Comprehending an individual's role in society and fusing both inter-

¹⁶⁵ Cribbet, *supra* note 109, at 11.

¹⁶⁶ Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 614, 677 (1988).

¹⁶⁷ Cribbet, *supra* note 109, at 23, 24.

¹⁶⁸ *Id.* at 38 ("[a] core principle of the environmental movement is that private choices must be subordinated to public choices").

¹⁶⁹ Singer, *supra* note 166, at 677; Simon, *supra* note 149, at 1362.

¹⁷⁰ N.A.A.C.P. v. Township of Mt. Laurel, 336 A.2d 713 (N.J. Sup. Ct. 1975), *rev'd*, 496 A.2d 390 (N.J. 1983); Southern Burlington Cty., N.A.A.C.P. v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983).

¹⁷¹ N.A.A.C.P. v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983); Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1, 9 (1989).

¹⁷² Simon, *supra* note 149, at 1359.

¹⁷³ Cribbet, *supra* note 109, at 9.

¹⁷⁴ Alexander, *supra* note 171, at 9.

¹⁷⁵ *Id.* at 31-32 ("[i]t is only through the experience of community that individuals can begin to resolve the problem of the self, that is, the task of fulfilling one's individuality while expressing one's sociability"); Laura S. Underkuffler, *On Property: An Essay*, 100 YALE L. J. 127, 140 (1990).

¹⁷⁶ Alexander, *supra* note 171, at 60-61; William Johnson Everett, *Contract and*

ests in a cooperative way brings about a heightened relationship between individual and community property rights.¹⁷⁷

Professor Singer postulates a "social relations approach" to the market and property distribution.¹⁷⁸ He emphasizes that the gulf between the powerful and the vulnerable and the spiralling effect of power granting itself more power requires a radical change in determining property rights.¹⁷⁹ Perceiving property in terms of social relations does not lead to increased government interference. The government regulates the market whether it promotes individual autonomy or social relatedness.¹⁸⁰ Evaluation of the social context surrounding individual interests demands new understandings of property distribution.¹⁸¹ In Professor Singer's words:

. . . To make economic analysis a useful way to develop policy recommendations, we must consider these questions in conjunction with a normative commitment to a form of social life. In developing this social vision, we must allow people to have freedom to develop various kinds of relationships without intrusion by the state; at the same time, we must make judgments both about the kinds of relationships we want to foster and the kinds of relationships that require regulation to prevent oppression. Cost/benefit analysis only makes sense in conjunction with judgments of this sort. This insight can, perhaps, shed some light on the current debates about economic analysis of law.¹⁸²

The historical concentration of land in the hands of the powerful created today's crisis in affordable housing. Land distribution and property rights provide a legal and societal environment in which poverty and racism grow. A redistribution of land to protect the vulnerable envisions a solution to the crisis. Property law exists as a construct of society. It can be built on a value system steeped in competition or can evolve from cooperative principles. While the discussion continues as to whether the market should be driven by individual needs or community needs, millions of people live day-to-day in inadequate housing and shelters. While the powerful and privileged continue the armchair philosophical debate, people live without shelter, with barely a roof over their heads, in segregated neighborhoods which exhibit qualities of American

Covenant in Human Community, 36 EMORY L. J. 557, 559 (1989).

¹⁷⁷ Underkuffler, *supra* note 175, at 147.

¹⁷⁸ Singer, *supra* note 166, at 633.

¹⁷⁹ *Id.* at 731, 751.

¹⁸⁰ Singer, *supra* note 166, at 650-52; *see also* Cribbet, *supra* note 109 (private property regulation to keep outsiders out is prevalent including cluster zoning, planned unit development, large-lot and minimum house size zoning, performance standards zoning, contract zoning, and historical preservation districts; Salins, *supra* note 108 (regulation includes zoning for single-family houses and lot size minimums, bans on multi-family housing or commercial activity and environmental standards).

¹⁸¹ Singer, *supra* note 166, at 702-03.

¹⁸² *Id.* at 703.

apartheid.¹⁸³ It is time for responsible action which considers the needs of the community and individual as one.¹⁸⁴ Chuck Matthei, a pioneer in community development work and alternative land institutions, states that "property can never be wholly private or wholly public, but must be seen as a partnership between the individual and the community."¹⁸⁵

As equal access to housing and community diversity become priorities, the necessary action unfolds. Without sacrificing practicality for the sake of idealism, solutions to the housing crisis emerge which preserve private property while attaining community goals. Community land trusts can function to support comprehensive access to the resource of land; not as second class homeownership for the poor, but as opportunities for everyone to decent housing. The value of land converts from individual profit-making to community profit-sharing. Viewed as a community resource and justly distributed among all individuals, land held in trust benefits common goals.

A community land trust defines itself as holding land in trust for future generations. A finite and valuable resource becomes available for present and future use by all people. Practical aspects flow once the spirit of commitment is attained. "It should not be seen as a confiscatory program but, rather, one that reflects a renewed respect for one another and a new regard for equity in the economic relationship between individuals and communities."¹⁸⁶

Envisioning the reality of regionally-based community land trusts requires a long-range view of solving affordable housing problems. Establishment of regions and democratic land control within regions by community land trusts requires patience and planning. Allotment of resources for regions to purchase land can develop from public funds already earmarked for housing and from recapturing the housing subsidy enjoyed by middle- and upper-income people.¹⁸⁷ Essential funding could also emanate from a one cent increase in property tax as successfully passed by voters in Burlington, Vermont.¹⁸⁸ Community property ownership could evolve from the individual property system by transfer of land upon resale. Once land reverts to community ownership, establishment of limited equity opportunities for all housing prevents the

¹⁸³ MASSEY & DENTON, *supra* note 100.

¹⁸⁴ Joseph Shuldiner writes that many Americans face housing affordability problems. Thus, the climate is right to promote housing solutions while creating opportunities for everyone to live in decent housing in communities of their own choosing. Shuldiner, *supra* note 129, at 18.

¹⁸⁵ Chuck Matthei, *A Community to Which We Belong: The Value of Land in Economics*, SOJOURNERS, November 1993, at 14 [hereinafter *A Community to Which We Belong*].

¹⁸⁶ *Id.* at 16.

¹⁸⁷ Requiring a cap on or elimination of mortgage interest deductions, property tax deductions and depreciation deductions could generate up to \$85 billion per year. See Hoeflich & Malloy, *supra* note 58, at 656; Kushner, *supra* note 100, at 603-08; Matthei, *supra* note 185, at 17; Salsich, *supra* note 118, at 1627-28, 1631, 1634, 1635, 1637.

¹⁸⁸ Widrow, *supra* note 148.

unpredictability of free market models, and maintains the cost of housing. Homes would still be privately owned, and homeowners would receive ninety year, renewable and inheritable leases to the land. Profit upon resale of housing would be limited for all income levels. Apartment buildings can convert to housing cooperatives and renters to shareholders. During the transition period, motivation for landlords to maintain property will exist in the form of reimbursement for costs of improvements upon resale. The value of the land remains under community control, and ownership interests in affordable housing become an opportunity for all.¹⁸⁹ "The poor need equity before subsidies."¹⁹⁰ Land preservation, as practiced by communities, entails residential, environmental, industrial and social preservation.¹⁹¹ Decisions made in a truly democratic process reflect community characteristics and compromise; land use beyond residential considerations enters the realm of collective control.

The realization of economic and racial community diversity will flow from creation of opportunities, both social and economic. The first step demands dismantling the racial ghetto:

Residential segregation is the institutional apparatus that supports other racially discriminatory processes and binds them together into a coherent and uniquely effective system of racial subordination. Until the black ghetto is dismantled as a basic institution of American urban life, progress ameliorating racial inequality in other arenas will be slow, fitful, and incomplete.¹⁹²

A breakdown of the distinctions between suburbs and cities, and the resultant opportunity for economic and racial housing integration, requires regional land use planning and discontinuing the artificial and discriminatory allocation of public dollars between the wealthier suburbs and the poorer neighboring cities. Twenty-five years ago, the Kerner Commission predicted the deleterious and destructive consequences of avoiding the integration choice and urged dismantling the suburban wall to remedy the underlying problems of racial segregation.¹⁹³ Now, overcoming distinctions between urban and suburban areas endures as an imperative. To do otherwise requires deliberate continuation of intentional and continuing discrimination against distant neighbors who, because of historical patterns of deliberate segregation, remain the disenfranchised members of society.

Zoning and tax laws sustaining exclusionary practices and shielding the middle- and upper-class from the plight of their neighbors must be repealed. The toll exclusionary zoning has exacted terminates with the implementation of "fair share" plans for suburban communities.¹⁹⁴ Under fair share plans,

¹⁸⁹ Matthei, *supra* note 69, at 101.

¹⁹⁰ *A Community to Which We Belong*, *supra* note 185, at 14.

¹⁹¹ *Id.* at 120.

¹⁹² MASSEY & DENTON, *supra* note 100, at 8.

¹⁹³ Boger, *supra* note 4, at 1304.

¹⁹⁴ Kushner, *supra* note 100, at 672-73; *see also* Chester Hartman, *A Challenge for*

suburbs present real choices to central city residents wishing to relocate. Low-income people tend to choose residential location based upon chances for good jobs, quality education and decent, safe housing. Public funding, free from the discriminatory restrictions of spending targetted to central cities, becomes available to provide real choices. "Therefore, the next wave of national and state urban policies should not merely reinstate or enlarge the established approach of reimbursing disadvantaged cities for discharging their poorhouse obligations. It should aim, instead, to promote a healthier and more economically natural distribution of regional resources and responsibilities."¹⁹⁵

Although the absence of misconceived property value judgments may ameliorate the prevalent "Not-In-My-Backyard" attitude toward low-income housing,¹⁹⁶ incentives for regional distribution of affordable housing must effectively combine with disincentives for noncompliance.¹⁹⁷ Courts ready to administer eminent domain and preemptive controls can effectuate enforcement of regional planning and community diversity.¹⁹⁸

Economic and racial integration will benefit all people and, if applied democratically, will be welcomed. "Once it is instituted, pre-remedy fears dissipated, and the initial disruptions and climate of change have subsided, a large segment of the population may find the result more closely approximates the kind of society they often envisioned."¹⁹⁹

VI. CONCLUSION

Where one lives, works, raises a family, tends a garden, and lies down to rest endure as essential elements of a peaceful existence. No matter the luck of their birth, the color of their skin, or the block that they live on, all people must have the opportunity for life's essentials. By virtue of being on a planet where the celebration of difference happens all too infrequently, everyone should have the opportunity for diverse communities.

the Third Sector Housing Movement, COMMUNITY ECON., Spring 1994, at 8.

¹⁹⁵ Salins, *supra* note 108, at 100.

¹⁹⁶ Hartman, *supra* note 119, at 1557.

¹⁹⁷ Kushner, *supra* note 100, at 674.

¹⁹⁸ *Id.* at 680.

¹⁹⁹ *Id.* at 682.