THE COMMUNITY LAND TRUST READER

Edited by John Emmeus Davis

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CONTENTS

PART FOUR Affordable Housing

PART FIVE Beyond Housing

Homes That Last

The Case for Counter-Cyclical Stewardship

John Emmeus Davis
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Until this year's mortgage meltdown, the preservation of affordable housing was defined mostly in terms of rentals. How do we preserve the affordability and quality of an aging rental stock? How do we prevent the displacement of low-income renters when the real estate market is hot? How do we discourage deferred maintenance when the market is cold? How do we save millions of units of federally subsidized rental housing as the contractual controls over how they are priced and who they may serve begin to lapse?

These remain serious concerns. The pressing problems of renters do not go away simply because public attention is suddenly focused on the frightening spike in foreclosures now occurring among homeowners. This latest housing crisis is a stunning reminder, however, that policies and programs to preserve affordability cannot be aimed at rental housing alone. Rentals are not the only homes that can be lost.

Affordability can slip away, housing quality can erode, and security of tenure can tragically disappear in owner-occupied housing as well, especially at the top and bottom of the business cycle. That is when persons of modest means are endangered the most, both those who are striving to *become* homeowners and those who are struggling to *remain* homeowners. That is when stewardship is needed the most: moderating prices that push housing out of reach; promoting repairs that keep housing sound; and managing risks that pry housing out of the tenuous grasp of less affluent homeowners in times of crisis.

Most of our nation's efforts to boost lower-income households into the ranks of first-time homeowners have stubbornly ignored these dangers and risks. Policymakers have continued to design homeownership programs for the sunny middle of the business cycle, assuming that affordability, quality, and security would take care of themselves. Of the storms that rage among the peaks and valleys of a real-world economy more prone to fluctuation than stability, there has been little acknowledgement—and even less accommodation.

That has been a glaring failure of public policy. Whenever public dollars or public powers are used to expand the supply of affordably priced, owner-occupied housing,

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more must be done to preserve these homes, especially when the economy is at its hottest—or coldest. More must be done to ensure that the public's investment remains in these homes, neither immediately removed at resale nor gradually depleted through deferred maintenance. More must be done to ensure that lower-income families can stay in their homes, neither nudged out by rising costs nor forced out by foreclosure. Counter-cyclical stewardship is how this is done. It is the only way to create homes that last.

Homes at Loss: The Cyclical Threats to Affordable Housing

Since the early 1980s, affordable housing in the United States has been buffeted by one crisis after another, roughly tracking the ups and downs of the business cycle. During periods of rapid economic growth, the price of renting or buying a home has usually risen far faster than the annual earnings of low-income and moderate-income households, producing a *crisis of housing affordability,* where persons of modest means are pushed out of the market or forced to skimp on other necessities to house themselves.

The downside of the business cycle has regularly and predictably brought a different set of problems. During periods of rapid economic decline, low- and moderate-income households are often hit with a *crisis of housing quality.* Less money flows into the construction of new housing and the rehabilitation and repair of existing housing. Builders break ground or break plaster on fewer units. They make less of an investment in the units on which they do work, since there is little incentive during lean economic times to employ more durable materials or to install more efficient or longer-lasting systems. As for lower-income homeowners who already occupy an aging house, townhouse, or condominium, the highest incentive in a bad economy is to invest nothing at all, reducing routine maintenance, foregoing major repairs, and putting off the replacement of major systems.

A *crisis of housing security,* by contrast, can happen at either end of the business cycle. Economic downturns are usually accompanied by rising unemployment, stagnant wages, and falling financial security for households on the bottom half of the income ladder. Until recently, this has seldom been accompanied by falling prices for housing. Real estate has historically been the exception to the rule that big-ticket items decline in price during a recession. Housing prices have often continued to climb even during downturns, although more slowly than during booms. When wages fall but prices do not, lower-income people have a harder time paying their rents or meeting their mortgage payments. This can loosen their hold on the housing that is theirs.

When prices fall along with wages, as they have during the current foreclosure crisis, the housing security of many more homeowners is put at risk. The profligate use of adjustable-rate mortgages, shared appreciation mortgages, and other creative schemes for financing high-priced homes gave many more households a personal stake in what

President Bush was fond of calling the "ownership society." But when creative financing (or predatory lending) collided with a sudden deflation in housing values, millions of homeowners were left owing more on their mortgages than their homes were worth. With no safety net to catch them as a faltering economy sent their real estate fortunes into free fall, many homeowners have faced individually a no-win choice between continuing to make payments on devalued homes or to default on overpriced mortgages. They have come belatedly to realize that the "ownership society," in a time of crisis, actually means "if you own it, you are on your own."

On the other side of the business cycle, the security of lower-income homeowners can also be undermined by economic prosperity. If homeowners are locked into an adjustable-rate mortgage that is tied to an economic indicator like the CPI, if they live in a state with no property tax protections for elderly and lower-income homeowners on fixed incomes, or if their utility costs soar far beyond their ability to pay, their homes can steadily become less and less affordable during good economic times. Tenure can become less secure.

Taking precautions to cope with such cyclical crises, public policy began long ago making corrections in the way that rental housing is structured and operated. As a result, we have gradually created an expanding stock of publicly assisted, privately owned rental housing with three protective features:

- affordability is perpetuated for many years, either through the nonprofit ownership of rental housing or through long-term regulatory agreements between public agencies and private landlords by which rent increases are moderated and income-eligibility is maintained;
- the safety, soundness, and condition of rental housing is preserved through the imposition of housing quality standards and through mandated maintenance and replacement reserves; and
- security of tenure is enhanced by careful screening of prospective tenants, by requirements for just cause eviction, by vacancy reserves that insulate owners against financial hazard if tenants default, and by periodic, third-party review of the records and practices of private landlords receiving public money to provide affordably priced rentals for lower-income people.

While protections like these have become standard practice in the rental sector, homeownership programs have been slow to follow suit. We have continued to lavish public resources on helping lower-income households to attain homeownership with little regard for what happens to these homes *after* they are purchased. This hands-off approach may be appropriate in places with stable real estate markets and in periods of gradual economic growth. Such places and periods are hardly the norm, however, even though most of our homeownership assistance programs have been designed as if they were. A better design is needed, one that weaves into the programs and tenures of publicly assisted homeownership some of the same protections for housing affordability, quality, and security that have long been a part of publicly assisted rentals. Homes that last are those that are wrapped in the durable garment of stewardship.

Homes That Last: The Stewardship of Homeownership

Although rarely a component of conventional programs for helping lower-income households gain access to market-priced homes, stewardship has long been a standard feature of shared-equity homeownership, a sector that includes community land trusts (CLTs), limited-equity cooperatives (LECs), and resale-restricted houses and condominiums with affordability covenants lasting many years. Because many of the rights, responsibilities, risks, and rewards of homeownership are shared between the occupants and sponsors of this housing, homeowners are not forced to go it alone. There is an organizational entity that stands behind these homes long after they are sold, performing various duties of stewardship.

What are these duties? They are defined, in large measure, by the cyclical dangers already described. Stewardship preserves the affordability of owner-occupied housing at the top of the business cycle. It promotes the durability and maintains the condition of owner-occupied housing at the bottom of the business cycle. It manages risks, protecting security of tenure at both ends of the business cycle. Any organization that would serve as the long-term steward for shared-equity homes must have the commitment and capacity to perform all of these duties (Table 1).

Responsibility for stewardship is sometimes retained by the governmental agency that provided funding for the housing's initial development or that required inclusion of affordably priced homes as a condition of the municipality's permission to build. The agency serves, in effect, as the long-term steward for the resale-restricted, owner-occupied housing it helped to create. Increasingly, this responsibility is being delegated to a nonprofit organization that performs these duties on the public's behalf. This may be a community development corporation that has been building or rehabilitating affordably priced homes for many years, which is now asked to assume the duties and to master the details of stewardship. Alternatively, it may be a community land trust or a limited-equity cooperative that has espoused and practiced the stewardship of owner-occupied housing from the very beginning. Indeed, in these models, stewardship is intrinsic to the way their housing is owned and operated. It is what they do best.

Regardless of whether the duties of stewardship are assigned to an external entity or are embedded in an organization's internal structure, they must be performed by *someone* over a long period. These duties are not self-enforcing. They do not get done unless someone is always present and adequately staffed to carry them out—and gets paid to do so.

There must be a dependable way to cover the steward's costs. The question is: Who should pay? The obvious answer would seem to be that whoever benefits the most

TABLE 1: The Stewardship of Homeownership	
Major Goals of Stewardship	**Minimal Duties of Stewardship**
Preserving housing affordability	• Maintain a waiting list of prospective buyers for the purchase of resale-restricted homes that are offered for sale • Certify the income-eligibility of prospective homebuyers • Regulate subletting • Inspect homes at time of resale • Calculate the formula-determined price at time of resale • Educate prospective buyers about special conditions on the use and resale of these homes • Oversee the transfer of homes, ensuring their resale to income-eligible buyers at affordable prices
Promoting housing quality	• Promote the installation of more durable materials and energy efficient systems • Prepare homebuyers for the maintenance responsibilities of homeownership • Inspect periodically the condition and repair of homes • Review proposed capital improvements • Oversee necessary rehabilitation before transfer • Maintain reserves for unexpected repairs and necessary replacements
Protecting housing security	• Screen and approve mortgages, preventing predatory lending • Review and approve refinancing of resale-restricted homes • Restrict the attachment of liens • Ensure adequate insurance coverage • Monitor the payment of property taxes • Secure equitable taxation of resale-restricted homes, preventing the displacement of homeowners too poor to pay taxes on real-estate profits they cannot claim as their own • Intervene to cure defaults and prevent foreclosures

from stewardship should pay most of its costs. This is not as simple as it seems, however, for the beneficiaries are multiple, including the private lenders, present homeowners, future homebuyers, and public funders of shared-equity housing. A case can be made for tapping any one of them to cover the costs of stewardship. In practice, the burden seldom falls solely upon a single beneficiary. Nor should it. All should pay their fair share, commensurate with the benefits received.

Private Lenders

The first beneficiaries of stewardship are the private, for-profit lenders who provide mortgage financing for owner-occupied housing. Stewardship is a credit enhancement that preserves the collateral, protects the investment, and reduces the risk of a for-profit financial institution. With stewardship in place, there is a third party standing behind the borrower, backstopping the deal: someone the mortgage lender can notify should a homeowner default; someone who can act swiftly to cure a default and prevent foreclosure. These are valuable services for which a private lender should arguably be expected to pay.

Long before the current mortgage crisis, there were in fact a number of private lenders that began treating stewardship as a credit enhancement—and began subsidizing part of its on-going costs. Some lenders, for example, have helped to subsidize the prepurchase costs of homebuyer counseling. Some have paid a per-capita fee to a nonprofit organization for every mortgage-ready household that is brought through their doors. In places where a CLT or other form of shared-equity homeownership is well established, there are also many examples of a mortgage lender offering a reduction in closing costs or a discount in mortgage rates in recognition of the enhanced security that a steward brings to the deal.

Although private lenders have so far not been asked to subsidize the postpurchase costs of stewardship, this is worth considering. A lender could make a front-end contribution to a maintenance or replacement reserve when closing on the mortgage for a shared-equity home. Alternatively, a steward could collect a back-end fee from lenders for every mortgage default it prevents from proceeding to foreclosure. With a foreclosure rate for its resale-restricted, owner-occupied homes that is many times *lower* than the current foreclosure rate in market-rate homes, CLTs in particular have begun making a compelling case for the cost-effectiveness of stewardship in helping a lender to avoid the losses that accompany most foreclosures. When a lender benefits so obviously from a steward's intervention, it is fair to ask the lender to cover a portion of the steward's costs.

Future Homebuyers

Another beneficiary of any stewardship regime that preserves the financial affordability and structural condition of owner-occupied housing is the next generation of homebuyers who are able to purchase these affordably priced, well-maintained homes. It is primarily for them, it may be argued, that stewardship is put in place. Because they reap most of stewardship's benefits, it is fair to charge them for much of its costs.

This is how a growing number of CLTs, LECs, and deed-restricted houses and condominiums cover a portion of their operating costs. At the time of resale, the steward repurchases the shared-equity home for a below-market price, determined by a formula embedded in the home's ground lease, share certificate, or deed covenant. Depending on the spread between the formula price for which the home is repurchased by the steward and the resale price that another lower-income homebuyer could afford, the steward may be able to add a "transfer fee" to the price charged to the next buyer without compromising the home's affordability. These fees are either used to cover a portion of the steward's direct costs of monitoring and managing its portfolio of shared-equity homes or they are deposited into a "stewardship fund" and used for repairs and replacements as necessary. By paying a slightly higher purchase price, the next generation of homebuyers covers some of the costs that have made their homes affordable and kept their homes in good repair.

Present Homeowners

The present generation of homeowners is also a beneficiary of stewardship. Aside from the obvious boon of being able to acquire a high-value home for a reduced price because of public and private subsidies the steward has brought to the deal, the owner-occupants of shared-equity homes are typically recipients of other services before and after the home's purchase. Most stewards provide homebuyer counseling, referrals to favorable financing, screening against predatory lenders, and training and support for on-going repairs. Nearly all stewards regulate capital improvements, require insurance coverage, and control the refinancing of shared-equity homes. Some operate revolving loan funds that lower-income homeowners can access for repairs, system replacements, or rehabilitation. Most intervene to cure defaults and prevent foreclosures in times of crisis.

Quite often, homeowners help to pay for these services, directly or indirectly. After purchasing a shared-equity home, they may be charged a monthly "stewardship fee," whether as an add-on to their ground rent (in a CLT), as a component of their carrying charge (in an LEC), or as part of their homeowner association fee (in a deed-restricted house or condo), that pays a portion of the steward's operating costs or capitalizes a reserve for maintenance and replacement. Alternately, at the time of purchasing a shared-equity home, these new homeowners may be required to take out a mortgage for slightly more than the home's initial purchase price in order to capitalize a maintenance and replacement reserve for their new home. Some stewards collect back-end fees when shared-equity homes resell, charging the seller for any extraordinary costs the steward has incurred in intervening to prevent a foreclosure or in refurbishing a poorly maintained home before it is resold to another lower-income household.

Public Funders

Finally, it may be argued that the benefits of stewardship accrue most abundantly to the public at large. Covering its costs, therefore, should come largely from public coffers. Just as government pays for the construction and maintenance of roads, schools, and other essential infrastructure and services—including the cost of developing affordable housing—government should pay the cost of stewarding affordable housing as a *public* good.

Some state and local governments have, in fact, begun making contributions to stewardship, using three different strategies.

First, governmental agencies have either paid their employees to perform the duties of stewardship or they have assigned that task to a community land trust, a community development corporation, or some other nonprofit, paying them an annual fee to monitor and manage resale-restricted homes.

Second, as a hedge against the possibility of deferred maintenance in the future, there have been instances of a governmental agency endowing a maintenance or replacement reserve at closing for each resale-restricted, owner-occupied home assisted with public funds.

Third, to reduce the threat of lower-income households being displaced from their resale-restricted homes as a result of rising property taxes, a number of state and local governments have adopted a more equitable approach to valuing shared-equity homes. They are assessed and taxed on the basis of the contractual cap that is placed on their resale prices, not on their "highest and best" market value. The ongoing affordability of these resale-restricted homes is protected because lower-income homeowners are not forced to pay taxes on real estate profits they can never reap.

Beyond these few helpful examples, however, public funders have usually been far more willing to subsidize the front-end costs of development than the back-end costs of stewardship. Their reluctance may melt away in the next few years, however, as the bills come due for the government's bailout of Fannie Mae, Freddie Mac, and other troubled financial institutions that are saddled with millions of nonperforming mortgages. Paying for stewardship is going to look increasingly like a bargain, when seen in light of the public's cost of repairing the damage that more attention to stewardship might have helped to avert.

A New Way Home: Toward a Policy of Counter-Cyclical Stewardship

Although stewardship has been slow in coming to programs designed to expand homeownership for persons of modest means, there are signs this may be changing. Faced with soaring real estate prices in some markets and collapsing real estate values in others, policymakers have begun to embrace new models of tenure that protect the affordability, quality, and security of owner-occupied housing *after* its sale. The stewardship of homeownership has been gaining ground as a policy priority.

Stewardship means different things to different people, however. The principal policy and programmatic divide has been between those who focus on preserving the *money* that is poured into subsidizing homeownership versus those who focus on preserving the *housing* such public largess has helped to create. "Dollars that last" or "homes that last" becomes the fundamental choice once stewardship moves to the fore.

Only the latter is fully capable of countering the triple threat that looms most ominously when real estate markets are very hot or very cold. Dollars that last, implemented through various mechanisms for recapturing the public's investment in owner-occupied housing when homes resell, do nothing to preserve the affordability of homes at the top of the business cycle. These homes return to the market at resale, moving beyond the reach of lower-income homebuyers as housing prices rise at a faster rate than household earnings. Mixed-income projects gradually shed their lower-priced units. Mixed-income neighborhoods eventually lose their lower-income homeowners.

At the bottom of the business cycle, affordably priced homes and lower-income homeowners may fare even worse. Recapture programs make no provision for protecting either the quality of owner-occupied housing or the security of lower-income homeowners. Government gets back the dollars it invested, but nothing is done to promote good maintenance when times are bad. Nor is anything done to prevent foreclosures when financially stressed homeowners can no longer make mortgage payments on properties that may have dropped in value.

On the steeper slope of economic expansion and on the slippery slope of economic decline, a higher standard of stewardship is needed. It is not enough to recapture public dollars when assisted homes are resold. It is not enough to reinvest recaptured dollars in helping lower-income households to enter the homeownership market. The homes themselves must be preserved. It is poor public policy when dollars are saved but homes are lost.

A better policy is needed: one that anticipates dangers that predictably lurk in an economic climate less prone to sun than to rain; one that takes precautions that prudently back the owner-occupied housing that public agencies and their private partners have worked so hard to create. Homes can be made to last, but they must be designed for days that are stormy, not only for days that are fair.