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Sharing Your Home With Strangers: Common-Interest Ownership and Financing Options

Debra Bechtel, Crystal Liu, Ernira Mehmetaj, and David Reiss†

As the affordable housing crisis in the U.S. escalates, housing policy analysts and advocates are re-examining, modifying, and combining ways of decreasing the costs of homeownership through shared ownership and shared financing while also, in some instances, preserving long-term affordability. This Article will touch upon the vast array of models and take a deep dive into one of them, the relatively new shared equity financing model. That model holds some promise and a lot of peril for homeowners.

I. TRADITIONAL MODELS OF HOMEOWNERSHIP AND FINANCING

Before the modern era, homeowners who had fee simple ownership of property had near-complete control of it pursuant to the common law of property: every owner's home was essentially their castle as far as the common law was concerned. That level of personal control over one's home does not really exist anymore. First, many homeowners live in some type of communal arrangement, in which they share access to building systems like HVAC (heating, ventilation, and air conditioning), plumbing, and elevators in condominium buildings; and amenities like landscaping, pools, and tennis courts in common-interest homeowner communities. Second, local and state governments impose land use and zoning controls that affect nearly every parcel of property. These controls limit the size and height of buildings, the location of utility lines, and the number of rooms buildings can have, among many other things. Finally, nearly all modern homeowners need help paying for their homes, so they take out mortgages from lenders. Lenders limit homeowners' control by putting limits on financing, sales, and renovations, among other restrictions.

Today, most people do not think twice about sharing ownership rights with other homeowners. After all, common-interest ownership models of

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housing, such as cooperatives, condominiums, and homeownership associations, have existed for well over a hundred years.[1] As cities became more crowded and buildings became bigger, some potential homeowners became interested in owning or controlling just a portion of a larger building. That necessitated cooperating with those who owned the other portions. This limited individual control but also allowed homeowners to share the cost of, and responsibility for, maintenance and capital repairs. The result of all this innovation is a range of ownership options that were not imagined in the preindustrial age.

In cooperatives, residents are shareholders in a corporation that holds title to the building.[2] In addition to their shares, shareholders receive a leasehold interest in discrete units of the realty owned by the housing cooperative.[3] On the other hand, the condominium model divides the deed for a parcel containing a building into separate deeds for each unit, or creates individual unit deeds from the outset if the condominium is built from scratch.[4] The condominium units have shared control of the building's common elements,[5] which are governed by a condominium association.[6] In many states, the formation and operation of condominiums are governed by statute.[7]

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1. The first formal housing cooperative on record was founded in 1862 in Hamburg, Germany. *About Germany*, COOP. HOUS. INT'L, https://www.housinginternational.coop/co-ops/germany/ [https://perma.cc/D855-5PS6] (last visited Feb. 25, 2022); Gerald Sazama, *A Brief History of Affordable Housing Cooperatives in the United States*, at 1 (U. Conn., Working Paper No. 1996609, 1996), https://opencommons.uconn.edu/econ_wpapers/199609 [https://perma.cc/8LR2-ZY5C] [hereinafter Sazama Working Paper]. By the early twentieth century, housing cooperatives flourished throughout Europe, albeit mainly in Germany and in Scandinavian countries. Gerald W. Sazama, *Lessons from the History of Affordable Housing Cooperatives in the United States: A Case Study in American Affordable Housing Policy*, 59 AM. J. ECON. & SOC. 573, 576–77 (2000). In the United States, the first housing cooperative, called a "home club," was founded on Eighteenth Street in New York City in 1876. Michael H. Schill, Ioan Voicu & Jonathan Miller, *The Condominium v. Cooperative Puzzle: An Empirical Analysis of Housing in New York City*, 36 J. L. STUD. 275, 277 (2007). It was not until after World War I that housing cooperatives became more established nationwide. Sazama, *Lessons from the History of Affordable Housing Cooperatives*, *supra* at 577.

2. VINCENT D. LORENZO, NEW YORK CONDOMINIUM AND COOPERATIVE LAW § 3:9 (2nd ed. 2021).

3. *Id.* Owners of cooperative apartments realize their leasehold interest in the form of a proprietary lease, which is typically set for a term of ninety-nine years. Schill et al., *supra* note 1.

4. *See* LORENZO, *supra* note 2, at § 3:1.

5. *See, e.g.*, N.Y. REAL PROP. LAW § 339-e (McKinney 2022) (providing a statutory definition of the term "common elements").

6. *See* Schill et al., *supra* note 1, at 278, 281–82. Under New York State's Condominium Act, the condominium association is referred to as the "Board of Managers." 3 WARREN'S WEED NEW YORK REAL PROPERTY LAW § 29.33 (John Blyth ed., 2021). Because of the need to create deeds for individual resident spaces in the condominium model, it is difficult to use the model in existing buildings with underlying mortgages unless such mortgages can be repaid or refinanced. As a result, the condominium model is used primarily in new construction.

7. *See* Schill et al., *supra* note 1, at 278 (discussing the passage of the condominium-enabling acts across the country as a precursor to the proliferation of condominium development in the United States during the mid-twentieth century). In New York State, for example, it is found in the NY Real

Cooperatives have been particularly popular in New York City and Washington D.C.,[8] while condominiums are present in every state.[9] Both models can also be used to connect multiple buildings or even multiple mobile homes,[10] with shared ownership of common elements in condominiums and shareholder ownership of the title-holding entity in a cooperative. Similarly, owners of single-family homes in a subdivision may cede certain rights to a homeowners association, which, in turn, maintains common spaces and shared amenities in the subdivision and enforces community standards regarding the design and maintenance of the homes.[11]

And today, it is the rare homeowner who thinks twice about why mortgages are part of so many real estate transactions. Real estate is expensive, and few have the money to pay for a home all in cash.[12] As a result, people enter into transactions with mortgage lenders and are exposed to all of the risks that come with that type of financing.[13] The lender can declare the homeowner to be in default, and even foreclose on the homeowner's interest in the property, if the homeowner does not comply with the terms of the mortgage.[14]

Additionally, homeowners rarely think twice about the government's ability to limit the use of land. Zoning and building codes have also been around for more than a hundred years. Historically, zoning has been used to limit the number of units of housing that could be built on a parcel of land.[15] More recently, however, government has sought to incentivize or legislate that parcels of land must include multiple units of housing if the owner were to develop it.[16] The recent move to upzone all single family

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Property Law Article 9-B. Condominium Act, N.Y. REAL PROP. LAW § Ch. 50, art. 9-B (McKinney 2021).

8. Schill et al., *supra* note 1, at 280.

9. U.S. CENSUS BUREAU, STATISTICAL BRIEF: CONDOMINIUMS 2 (May 1994), https://www2.census.gov/library/publications/1994/demographics/sb94-11.pdf [https://perma.cc/XG87-RSAE].

10. Anne Wallace Allen, *Mobile Park Co-Ops Thrive in Vermont*, SEVEN DAYS (Apr. 19, 2021, 4:45 AM), https://www.sevendaysvt.com/OffMessage/archives/2021/04/19/mobile-home-park-co-ops-thrive-in-vermont [https://perma.cc/3YDV-NRNP]; Daniel Zwerdling, *When Residents Take Ownership, A Mobile Home Community Thrives*, NPR (Dec. 27, 2016, 4:08 PM), https://www.npr.org/2016/12/27/503052538/when-residents-take-ownership-a-mobile-home-community-thrives [https://perma.cc/X3JW-CTQH].

11. *Record Number of Homeowners Live in HOA Communities*, NAT'L ASSOC. OF REALTORS (Sep. 23, 2020), https://magazine.realtor/daily-news/2020/09/23/record-number-of-homeowners-live-in-hoa-communities [https://perma.cc/27GT-6SQZ].

12. N. ERIC WEISS & KATIE JONES, CONG. RSCH. SERV., R24995, AN OVERVIEW OF THE HOUSING FINANCE SYSTEM IN THE UNITED STATES, at Summary (2017), https://sgp.fas.org/crs/misc/R42995.pdf [https://perma.cc/7YP5-39VB].

13. *See id.*

14. *Id.*

15. 19 POWELL ON REAL PROPERTY § 79D.03 (Michael Allen Wolff ed., 2021).

16. *See* Sarah Mervosh, *Minneapolis, Tackling Housing Crisis and Inequality, Votes to End Single-Family Zoning*, N.Y. TIMES (Dec. 13, 2018), https://www.nytimes.com/2018/12/13/us/minneapolis-single-family-zoning.html [https://perma.cc/ZER5-KVKP].

zones to allow multifamily housing in cities like Minneapolis is an example of this relatively new approach to encourage multiple units of housing on parcels that had been zoned as single family.[17] Building codes have also limited how buildings can be used by owners and tenants alike.

Finally, like ownership, mortgage financing can be sliced and diced in many ways. Both the government and private sector have reduced down payment amounts to make loans more accessible to borrowers and thereby expand homeownership opportunities.[18] This strategy has reduced the size of standard down payments significantly over time.[19] Lenders have also reduced, and even eliminated monthly payments, more often for existing homeowners than prospective homeowners. Reverse mortgages, for instance, allow homeowners and cooperative owners to borrow and not make monthly payments.[20] Even new homeowners can sometimes get in on the action with interest-only loans[21] or adjustable-rate mortgages.[22] Such loans allowed homeowners in the early 2000s to have negative amortizing loans in which the amount owed *increases* over some period of time.[23] A homeowner could also give up some of the upsides of owning a home with a shared appreciation mortgage, in which the lender charges a lower interest rate in exchange for some of the upsides on the sale of the home.[24] Or, the

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17. *Id.*

18. *See* Jill Chodorov Kaminsky, *Zero-Down Home Loans Are Back. Be Very Leery.*, WASH. POST (Feb. 19, 2018), https://www.washingtonpost.com/news/where-we-live/wp/2018/02/12/zero-down-home-loans-are-back-be-very-leery/ [https://perma.cc/YZ9M-ETJ8]; *USDA Offers No Down Payment Options for Rural Home Buyers*, USDA (Oct. 15, 2014), https://www.rd.usda.gov/newsroom/news-release/usda-offers-no-down-payment-options-rural-new-york-home-buyers [https://perma.cc/3HMC-YSXV].

19. *See* Kaminsky, *supra* note 18.

20. *Reverse Mortgages*, FTC CONSUMER INFO., https://www.consumer.ftc.gov/articles/0192-reverse-mortgages [https://perma.cc/T55P-8LKH] (last visited Feb. 25, 2022).

21. Stephan F. Thode & Richard Kishe, *The Zero-Coupon/Interest-Only Fixed-Rate Mortgage: An Alternative for Funding Low- to-Moderate Income Households*, 9 J. REAL EST. RSCH. 263, 265–66 (1994); Amy Fontinelle, *How Do Interest-Only Mortgages Work?*, INVESTOPEDIA (July 3, 2021), https://www.investopedia.com/articles/managing-wealth/042516/how-interestonly-mortgages-work.asp [https://perma.cc/KLS9-QTY2].

22. Jo Carrillo, *Dangerous Loans: Consumer Challenges to Adjustable Rate Mortgages*, 5 BERKELEY BUS. L. J. 1, 28–29 (2008); Dan Levine, *Wells Fargo to Settle Lawsuit over Pick-a-Payment Loans*, REUTERS (Dec. 14, 2010, 6:54 PM), https://www.reuters.com/article/wellsfargo-settlement/wells-fargo-to-settle-lawsuit-over-pick-a-payment-loans-idINN1427719820101215 [https://perma.cc/SBU7-LUVF].

23. Christopher J. Mayer, Karen M. Pence & Shane M. Sherlund, *The Rise in Mortgage Defaults* 13–14 (Fed. Rsrv. Bd., Working Paper No. 2008-59, 2008), https://www.federalreserve.gov/pubs/feds/2008/200859/200859pap.pdf [https://perma.cc/7XSW-KJ36].

24. Emira Mehmetaj & David Reiss, *The Promise and Perils of Shared Equity Financing*, 35 PROB. & PROP. 46, 47 (2021); Julia Kagan, *Shared Appreciation Mortgage (SAM)*, INVESTOPEDIA (Feb. 13, 2022), https://www.investopedia.com/terms/s/shared-appreciation-mortgage.asp [https://perma.cc/B5FC-UTZQ].

downside of owning a home can be limited with non-recourse debt, either through the mortgage terms or an applicable statute.[25]

The reverse mortgage, interest-only mortgage, and shared-appreciation mortgage products outlined above all have established a solid grounding in law and practice due to their ongoing presence in the housing finance industry. But there are all sorts of new ways to slice and dice the rights and responsibilities of homeownership that go even further beyond those approaches, and importantly, can be used to increase access to homeownership for low and moderate income households. Across all of these newer models, low to moderate income households are able to invest a smaller quantity of equity in a home than afforded by more traditional financing.[26] Notwithstanding that fact, some newer shared equity models of homeownership continue to present risks to potential homeowners, risks that are not readily apparent. As with any innovation, these models also come with trade-offs for owners and their communities.

Innovators in both the for-profit and not-for-profit sectors have been thinking about other ways that homeowners can share aspects of ownership. Ownership can be shared through community land trusts to ensure long-term housing affordability. And ownership of functions such as kitchens and living spaces can be shared through co-living arrangements. Finally, ownership can be shared through joint equity investments. We look at those options below.

II. SPLITTING OWNERSHIP FOR LONG-TERM AFFORDABILITY

Taking note of the hurdles individuals face to purchase a new home and their struggles to maintain them, various government agencies and not-for-profit entities stepped in to alleviate some of the burdens of homeownership. In return, they often imposed restrictions beneficial to the community or to other residents. Using the condominium, cooperative, and homeowner association ownership structures outlined above, these models[27] have created long-term, affordable homeownership opportunities

25. Dov Solomon & Odelia Minnes, *Non-Recourse, No Down Payment and the Mortgage Meltdown: Lessons from Undercapitalization*, 16 FORDHAM J. CORP. & FIN. L., 529, 533–34 (2011); Julia Kagan, *Non-Recourse Debt*, INVESTOPEDIA (May 13, 2020), https://www.investopedia.com/terms/n/nonrecoursedebt.asp [https://perma.cc/982Y-MU5D].

26. *See infra* notes 34–36 discussing community land trusts, deed-restricted programs, and limited equity housing cooperatives.

27. *See infra* notes 33–58 and accompanying text.

through alternative shared equity methods such as community land trusts,[28] deed-restricted programs,[29] and limited equity housing cooperatives.[30]

Community land trusts increase affordability through a dual ownership model, by which one party (usually a not-for-profit organization with some residents on its board of directors) holds title to the land, while the resident holds title to the building located on the land.[31] Because the cost of the land itself is eliminated from the purchase price of a home, homeowners can more easily afford the homes, thereby encouraging homeownership and making it more feasible for low-income families to purchase.[32] The homeowner's interest is subject to a ground lease or deed restrictions regarding sale price, and income limits designed to maintain affordability for future buyers.[33] Community land trusts may also require primary residence and may limit subletting.[34] Furthermore, the homeowner is allowed to benefit from some portion of the price appreciation.[35] The great advantage of this model is that the not-for-profit ownership entity can enforce these deed and ground lease restrictions more easily than it could if they were contained in a condominium homeowner agreement or cooperative proprietary lease.[36] In addition, the not-for-profit entity also provides technical assistance, support, and even rehabilitation funding for the home or unit owners.[37] One

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28. *See Community Land Trusts (CLTs)*, COMMUNITY-WEALTH.ORG, https://community-wealth.org/strategies/panel/clts/index.html [https://perma.cc/MVA4-6YU6] (last visited Feb. 25, 2022).

29. *See Deed-Restricted Homeownership*, LOC. HOUS. SOLS., https://www.localhousingsolutions.org/housing-policy-library/deed-restricted-homeownership/ [https://perma.cc/S4FZ-5TW2] (last visited Feb. 25, 2022).

30. *See* BRETT THEODOS, ROB PITINGOLO, SIERRA LATHAM, CHRISTINA STACY, REBECCA DANIELS & BRENO BRAGA, AFFORDABLE HOMEOWNERSHIP: AN EVALUATION OF SHARED EQUITY PROGRAMS 4 (2017); *Limited Equity Cooperatives*, LOC. HOUS. SOLS., https://www.localhousingsolutions.org/housing-policy-library/limited-equity-cooperatives/ [https://perma.cc/PP5K-KGFW] (last visited Feb. 25, 2022).

31. *Community Land Trusts*, *supra* note 28.

32. *Id.*

33. *Id.*

34. Andrew Decker, *Community Land Trusts and State Legislation: A Model Act to Enable This Affordable Housing Tool*, AFFORDABLE HOUS. & CMTY DEV. L. 489, 507 (2018).

35. *Deed-Restricted Homeownership*, *supra* note 29.

36. A distinctive feature of a community land trust ("CLT") vis-a-vis other shared equity homeownership models is its focus on "community control" realized by the inclusion of a diverse cross-section of members of its catchment community—such as community activists, other non-profit professionals, and elected officials—to serve on the CLT's Board of Directors ("Board"). Anna Carlsson, *Shared Equity Housing a Review of Existing Literature*, JOINT CTR. HOUS. STUDIES OF HARV. U. (Nov. 21, 2019), https://www.jchs.harvard.edu/research-areas/student-work/shared-equity-housing-review-existing-literature [https://perma.cc/58CE-6SR3]. Accordingly, unlike even limited equity cooperatives, CLTs are steered by a board that is not fully comprised of residents with an equity stake in the CLT's financial future. *See id.* at 6, 9. Thus, as compared to decision-making bodies in limited equity cooperatives, a CLT's board is more incentivized to enforce affordability caps on deed restrictions or cooperative proprietary leases than that of a limited equity cooperative. *See* JOHN EMMEUS DAVIS, NAT'L HOUS. INST., SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUSING 18 (2006), https://groundedsolutions.org/sites/default/files/2018-10/13%202006-Shared-Equity-Homeownership.pdf [https://perma.cc/VDG7-M9EA].

37. Decker, *supra* note 34, at 496.

downside for the residents is that the sale limits may not allow heirs to take the property automatically when the resident dies, or may even impede the assignment of the deed or ground lease to a surviving family member.[38] In addition, when there is a sale, it must be at a price below appraised value to a qualified low-income buyer.[39] And homeowners may receive only a portion of any increase in the value of the home.[40]

Limited equity housing cooperatives are similar to traditional co-ops but are made available to income-eligible individuals at affordable prices.[41] Unlike the land trust model, though, income and price restrictions are not generally included in a deed or ground lease, but rather in the proprietary lease, the by-laws, and possibly a regulatory agreement with a government agency.[42] In some states, such as Vermont, there are limited equity cooperative statutes that also require specific restrictions in the certificate of incorporation of the owning corporation.[43] Like the other affordable housing models, the current homeowner's ability to profit from price appreciation is capped at the time of resale.[44] The model provides more autonomy for the homeowner than the land trust model, but it also provides less financial security if the homeowner or cooperative corporation encounters financial problems. In the limited equity cooperative model, not-for-profit corporations with an ownership stake play no supporting role.

III. SHARING LIVING SPACE TO INCREASE AFFORDABILITY (FORMERLY SINGLE ROOM OCCUPANCY BUILDINGS)

Another way of reducing housing costs for low-income households is to design housing to include shared kitchens and bathrooms, in addition to the more typical shared amenities found in multifamily housing such as lobbies, laundry rooms, and community rooms. The approach harkens back to an old housing model, ultimately much-maligned, called single room occupancy buildings or SROs. These were originally referred to as

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38. *See* Janet Hamer, *CLTs Keep Housing Affordable*, PARTNERS IN CMTY. & ECON. DEV. (2006), https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/article-hamer.pdf [https://perma.cc/G2RP-WCAT] ("There are also other restrictions on . . . transfer to heirs . . . .").

39. *See* Decker, *supra* note 34, at 491.

40. Martin Moylan, *Advocates Eye Community Land Trusts to Increase Access to Homeownership*, MPR NEWS (Feb. 4, 2020, 10:00 AM), https://www.mprnews.org/story/2020/02/04/advocates-eye-community-land-trusts-to-increase-access-to-home-ownership [https://perma.cc/8TDE-7L5V]. By contrast, condominium units that transfer fairly easily to heirs and cooperative units, are often governed by a proprietary lease that allows "financially responsible" heirs to take over without review by the board of directors. *Id.*

41. *Limited Equity Cooperatives*, *supra* note 30.

42. *See generally* Debra Bechtel, *New York City Low-Income Cooperatives: A Guide for Practitioners*, 48 N.Y. REAL PROP. L. J. 17 (Spring/Summer 2020).

43. VT. STAT. ANN. tit. 11, § 1598 (West 2021).

44. *Limited Equity Cooperatives*, *supra* note 30.

"boarding houses"; and they ultimately became stigmatized as owners provided fewer and fewer services as the model became less and less profitable.[45]

With the need for affordable housing increasing so much in recent years, SRO-type modes have received renewed attention. New York University's Furman Center, for instance, has recently noted that "it is worth considering whether [New York City] needs an updated housing model that helps meet the need SROs filled in the last century."[46] The report also considered the costs of constructing new micro or SRO-type units and converting existing hotels into SRO-type affordable housing.[47]

Developers and housing advocates have begun using labels that are trendier than the now-unpopular "SRO" to describe recent housing models with shared kitchens and bathrooms. The so-called "co-housing" or "co-living" buildings have proliferated in recent years. For example, a company called Common began in New York City and has now expanded to six cities.[48] In many of these projects, residents may only have rental leases or membership agreements. However, the innovative approaches to space can also be combined with home ownership models. In Seattle, for example, a shared space model has been combined with an accessory dwelling unit approach to create additional units on existing single-family-home lots and then connect them through cooperative ownership.[49] There may be risks or trade-offs for residents who become members or shareholders of these innovative ownership entities, but the reduced costs and community support may outweigh the risks. These new shared housing models often also require updates to zoning and building codes to be compliant with local law.[50]

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45. Brian J. Sullivan & Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. REV. 113, 117 (2013).

46. ERIC STERN & JESSICA YAGER, 21st CENTURY SROs: CAN SMALL HOUSING UNITS HELP MEET THE NEED FOR AFFORDABLE HOUSING IN NEW YORK CITY? (N.Y.U. Furman Ctr., 2018), https://furmancenter.org/files/Small_Units_in_NYC_Working_Paper_for_Posting_UPDATED.pdf [https://perma.cc/XL9C-DTAE].

47. *See generally* NOAH KAZIS, ELISABETH APPEL & MATTHEW MURPHY, CHALLENGES AND OPPORTUNITIES FOR HOTEL-TO-HOUSING CONVERSIONS IN NEW YORK CITY (N.Y.U. FURMAN CTR., 2021), https://furmancenter.org/research/publication/challenges-and-opportunities-for-hotel-to-housin g-conversions-in-new-york-c [https://perma.cc/FX62-6E45].

48. Common offers renters in New York, Chicago, Philadelphia, and other major cities the opportunity to rent studios at more competitive prices than average market rents because bathrooms and kitchen units are shared across apartments. *See City Living Made Better*, COMMON, https://www.comm on.com/why-common/ [https://perma.cc/ZH33-LKVU] (last visited Feb. 26, 2022); Kelly Busche, *Co-living Company Common Enters Twin Cities Market with Management of New St. Paul Apartments*, MINN./ST. PAUL BUS. J. (Dec. 9, 2021), https://www.bizjournals.com/twincities/news/2021/12/09/co-living-company-enters-twin-cities-market.html [https://perma.cc/5URU-FV8W].

49. *The Treehouse*, FROLIC, https://www.frolic.community/projects/the-treehouse [https://perma .cc/ZK2G-AFA3] (last visited Feb. 26, 2022).

50. *See* Woody Victor, *Re-designing Co-Living: Current and Future State in NYC*, CAPALINO, (Jan. 9, 2020), https://www.capalino.com/redefining-co-living-current-and-future-state-in-nyc/ [https:/

IV. ENHANCING AFFORDABILITY THROUGH SHARED EQUITY FINANCING[51]

Whether ownership is shared or not, shared responsibility for financing a home can make it more affordable. Fintech companies have recently stepped onto the shared equity financing playing field, but the concept has been around for quite some time. A shared equity financing agreement typically involves two parties: a potential homeowner and an investor.[52] The investor invests alongside the potential homeowner, and, in return, owns a percentage of equity in the new home.[53] If the investor does not provide all of the additional equity that the prospective homeowner needs, the homeowner can apply for a mortgage to make up the difference.[54]

The homeowner would then typically occupy the home, pay all expenses in connection with owning it (taxes, insurance, etc.), and maintain it according to the investor's requirements, without making any monthly payments to the investor.[55] Upon the maturity of a set investment term (or an earlier termination due to an agreed-upon condition like a sale), the investor would receive the initial amount of its investment, plus its equity share in the home's value.[56] To pay off the investor, the homeowner could refinance the loan, use proceeds from selling the property, or pay off the investor from savings.[57]

A. History of Shared Equity Financing

In 1976, equity financing became desirable because Section 280A of the Internal Revenue Code was written to allow for the mixed tax use of a single property, permitting an investor to claim certain tax deductions.[58] Section 280A was targeted at equity sharing owners.[59] It allows the occupier to deduct mortgage interest and property taxes, and the investor to deduct depreciation, all on the same property at the same time.[60] To qualify

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/perma.cc/V2RL-VQCG].

51. The remainder of this Article builds on Mehmetaj & Reiss, *supra* note 24.

52. James Chen, *Shared Equity Finance Agreements*, INVESTOPEDIA (Oct. 21, 2020), https://www.investopedia.com/terms/s/sharedequityfinanceagreements.asp [https://perma.cc/Q6LK-8BUG].

53. *Id.*; *How It Works*, NOAH, https://www.noah.co/how-it-works [https://perma.cc/436U-4XYR] (last visited Feb. 26, 2022).

54. *See Still Have Questions? We Have Answers*, NOAH, https://www.noah.co/faq [https://perma.cc/8TL6-LEG8] (last visited Feb. 26, 2022).

55. *See id.*

56. *See id.*

57. *See id.*

58. *See* Ralph V. Switzer, Jr. & Kathleen K. Hallloway, *Lending or Renting to Offspring May Benefit Taxpayers*, TAX'N FOR ACCT. 355, 356–57 (1995).

59. *See id.*

60. *See* John David Zook, *Family Tax Planning With Shared Equity Financing Setups*, 56 TAX'N FOR ACCT. 84, 86 (1996).

for depreciation deductions, the investor must collect "fair rental" from the occupier.[61] Thus, it is important to note that Section 280A does not apply to the shared equity financing model explained below because the occupier does not pay rent.

However, while Section 280A does not apply to the shared equity financing model explained below, it popularized the notion of splitting ownership between an occupant and an investor. The most common form of equity sharing is when parents share in the purchase and cost of maintaining a house used by their child as a principal residence.[62] According to the shared equity agreement, the parents would then rent out their portion of the home to the child and pay a portion of the mortgage payment.[63] The parents would report the rent they receive from the child and receive the annual tax benefits generally available from renting real estate.[64] Additionally, the parents can deduct their percentage share of the mortgage interest and taxes, the maintenance expenses they pay, and depreciation based on their percentage share of the property's depreciable basis.[65]

Various government agencies and not-for-profit entities saw another opportunity to create long-term affordable homeownership programs through shared equity financing.[66] In return for providing a potential homeowner a subsidy, these agencies and entities would retain a percentage of a home's appreciation at the time of resale.[67] These agencies and entities would then reinvest the funds they receive from the home's appreciation in value into subsidies provided to new homeowners, thereby recirculating funds available for affordable housing to more income-eligible households.[68] This model essentially bridged the gap between the financing homeowners could obtain and the actual market cost of purchasing a home.

These programs were designed with long-term affordability in mind, while also allowing the homeowner a share of any appreciation.[69] These programs vary significantly, but homeowners can often accrue significant equity with some of them.[70] Even with resale price restrictions designed to limit the sale price so that the property remains affordable to other low-

61. *Id.* at 84.
62. *See id.*
63. *Id.*
64. *Id.* at 86.
65. *Id.*
66. *See Paths to Homeownership for Low-Income and Minority Households*, U.S. DEP'T HOUS. & URB. DEV. (2012), https://www.huduser.gov/portal/periodicals/em/EM_Newsletter_Fall_2012_FNL.pdf [https://perma.cc/7ZJR-DF2K]; THEODOS ET AL., *supra note* 30, at 4, 9, 35 (2017).
67. *Paths to Homeownership for Low-Income and Minority Households*, *supra* note 66, at 19.
68. *Id.*
69. *See id.* at 20.
70. *Id.*

income homebuyers, homeowners often earn significant returns when selling their homes.[71]

These programs have also led to lower delinquency and foreclosure rates among shared equity homeowners when compared with homeowners of market-rate housing.[72] Overall, the below-market-rate reduces the risks that homeowners will lose money in a declining market and could also help homeowners increase their savings.[73]

Additionally, governmental and not-for-profit shared equity programs benefit from transparency, in that they generally provide clear terms about the equity sharing arrangement.[74] This transparency is less available in the private shared equity financing sector, as shall be seen below.[75]

Some local governments, including New York City, have a long history of developing shared equity programs to address housing and economic disparities. New York City's Department of Housing Preservation and Development, Economic Development Corporation, and Department of Worker and Consumer Protection have recently issued a Shared Equity Request for Information ("RFI").[76] As the RFI notes, and as summarized above, New York City has engaged in various shared equity strategies over the past few decades, including limited equity cooperatives, homeownership units, mutual housing associations, and community land trusts.[77]

Colleges and universities have also relied on various shared equity financing and shared appreciation mortgages to help their faculty members afford to live in high-cost regions. These programs are designed for relatively high-income borrowers who have little savings, but the lessons and strategies may be applicable to efforts to support low-income homeowners as well. Princeton University has one of the few shared equity financing programs in higher education.[78] It is structured as a tenancy in common, in which the university has a 1/3 interest in the property (and receives 1/3 of the appreciation, subject to certain adjustments upon sale).[79] The program assists the university in its recruitment efforts for tenured

71. *See id.* at 20, 24.
72. *See id.* at 20.
73. *Id.*
74. *See* Mehmetaj & Reiss, *supra* note 24, at 4, 5.
75. *See id.*
76. *Shared Equity RFI*, NYC DEP'T HOUS. PRES. & DEV., https://www1.nyc.gov/site/hpd/services-and-information/shared-equity-rfi.page [https://perma.cc/3Y9D-TM3U] (last visited Feb. 26, 2022).
77. *Id.*
78. *See Tenancy-in-Common Program*, PRINCETON UNIV., OFF. FIN. & TREASURY, https://finance.princeton.edu/risk-management-tax-rents-mortgages/mortgages/tenancy-common-program [https://perma.cc/YX93-JX2N] (last visited Feb. 26, 2022).
79. *Id.*

faculty members by allowing them to purchase a single-family home in the high-cost region of southern New Jersey.[80]

B. New Private Shared Equity Financing Options

The private sector jumped on board the shared equity financing bandwagon more recently. Players such as Unison,[81] established in 2004, and others such as Hometap,[82] established in 2017, have been extending their reach to more states. The chart below outlines the terms that different players in the private sector offer:

	Hometap[83]	Noah[84]	Point[85]	Unison[86]
Established	2017	2016	2015	2004
Availability	14 states	9 states + DC	16 states + DC	28 + DC
Min. Investment	$15,000[87]	[]	$25,000	$30,000
Max. Investment	$600,000[88]	$500,000	$500,000	$500,000
Max. Share of Value	30%	None	None	None
Investment Term	10 years	10 years	30 years	30 years
Fees	3%	Servicing Fee[89] (incl. underwriting and filing fees) of $2,000 or 3% of the	3-5% of the financing amount, appraisal, and third-party	[]

80. *See id.*

81. *See generally Welcome Home*, UNISON, https://www.unison.com/ (last visited Feb. 26, 2022).

82. Mary Ann Azevedo, *Hometap Closes on $60M to Let People Tap Into Their Home Equity Without Taking Out a Loan*, TECH CRUNCH (Dec. 6, 2021), https://techcrunch.com/2021/12/06/hometap-closes-on-60m-to-let-people-tap-into-their-home-equity-without-taking-out-a-loan/ [https://perma.cc/THY6-BJDD].

83. Not confirmed by Hometap. *See Hometap Is an Investor, Not a Lender*, HOMETAP, https://www.hometap.com/how-it-works/ [https://perma.cc/6PWD-65AU] (last visited Feb. 26, 2022).

84. *See Still Have Questions? We Have Answers*, *supra* note 54.

85. *How Point Works*, POINT, https://point.com/how_it_works [https://perma.cc/2U68-SB38] (last visited Feb. 26, 2022).

86. *See Welcome Home*, *supra* note 81.

87. Aly Yale, *Hometap vs. Unison: Home Equity Comparison*, LENDEDU (Feb. 2, 2022), https://lendedu.com/blog/hometap-vs-unison-home-equity/ [https://perma.cc/U5Z7-RWST].

88. *Id.*

89. *Tap Into Your Home's Equity—And Owe Nothing for 10 Years*, NOAH, https://www.noah.co/home-value-investment [https://perma.cc/W8LJ-G842] (last visited Feb. 26, 2022).

		investment amount, whichever is higher, plus third-party fees (incl. appraisal)	fees[90]

To understand how these private players function, it is important to illustrate how they structure a deal. Take Point, for example. First, it determines a property's "risk-adjusted home value."[91] It does this by subtracting the product of the current home value (as determined by an appraiser) and the valuation adjustment (a percentage that typically ranges from 15% to 20%) from the current home value.[92] For illustrative purposes, if an appraisal determined that a home's value is $500,000 and Point's valuation adjustment was 16%, the risk-adjusted home value would be $420,000 ($500,000 – ($500,000 * 16%)).[93] Point offsets its risk through the valuation adjustment, thereby reducing its exposure to downturns and amplifying its returns in a rising market.[94]

In an appreciation scenario, the total payout to Point would be calculated by first determining the difference between the increased home value and the adjusted home value, then multiplying that number by the percentage of the equity share, then adding the original funding amount.[95] Once again, for illustrative purposes, if the increased home value in year 10 was $854,100, then the total payout to Point would be $179,400.[96] This payment is equivalent to (($854,100 – $420,000) * 30% + $50,000 (original funding amount)), adjusted for costs and fees.[97] Accordingly, Point's investment gain is $129,400, and its annualized return on investment ("ROI") is 13.63% over ten years.

In contrast, in a deprecation scenario, when a property's value is decreased to $375,000, based on the same calculation method stated above, its payout would be $36,600, representing an investment gain of -$13,400 and

90. *What Are the Fees Associated With a Point Investment?*, POINT, https://help.point.com/article/38-point-service-fees [https://perma.cc/J45F-JUCE] (last visited Feb. 26, 2022).

91. *See How Much a Homeowner Could Get Today, and How Much It Would Cost.*, POINT, https://point.com/calculator [https://perma.cc/WW4H-2PUU] (last visited Feb. 26, 2022).

92. *See id.* ("Because Point shares in downside, Point applies a Risk Adjustment of 15% to 20% to offset small declines in home value and protect its initial investment.").

93. *See id.*

94. *See id.*

95. Figures used in the calculation were taken from the Point's website. *See id.*

96. *See id.*

97. *See id.* ("In exchange for Point's investment today, Point receives a share in the home's appreciation above the Risk-Adjusted Home Value.").

an annualized ROI of -3.07% over ten years.[98] Once again, for illustrative purposes, this payout is equivalent to (($375,000 – $420,000) * 30% + $50,000 (original funding amount)), adjusted for costs and fees.[99]

Something to keep in mind when reviewing depreciation scenarios is that many borrowers, under traditional mortgages, escape deficiency judgments when their home loses significant value. But with the depreciation scenario described above, the homeowner would still owe Point a payout even if the homeowner had no equity left in the property. A home would have to depreciate significantly for Point to be wiped out completely.

C. Homeowner Expectations in Shared Equity Financing Agreements

The expectations for the resident homeowners (as opposed to the non-resident investor homeowner) in shared equity financing agreements are similar to those in more typical ownership structures. In a shared equity agreement,[100] the resident homeowner pays all taxes, assessments, and insurance.[101] The homeowner[102] is also expected to maintain and repair the property as needed and ensure compliance with all applicable laws.[103] Additional homeowner expectations in shared equity agreements concern monetary issues. Homeowners are typically prohibited from obtaining further financing unless the shared equity investor approves of the lender.[104] The liquidated damages are also typically high, usually equaling the total shared equity investment amount. Further, although private investors such as Hometap claim to be equity investors, they may also require the homeowner to enter into a mortgage instrument.[105]

The private market's innovative shared equity financing products can seem extremely attractive for homeowners, especially since homeowners would not have to worry about monthly payments or interest due to an investor for the investor's equity investment.[106] Homeowners also retain

98. Again, with this scenario our numbers were taken from Point's website. *See id.*

99. Numbers taken from the Point website. *See id.*

100. *See* Jeff Gitlen, *Best Home Equity Sharing Companies to Invest in Your Home*, LENDEDU (Mar. 1, 2022), https://lendedu.com/blog/home-equity-sharing-agreements/ [https://perma.cc/Z7KT-8MBZ].

101. *See Who Is Responsible For Property Taxes, Insurance And Property Maintenance Costs?*, POINT (Dec. 27, 2019), https://help.point.com/article/26-who-is-responsible-for-property-taxes-insurance-and-property-maintenance-costs [https://perma.cc/E4L4-M8JT].

102. For simplicity's sake, we will refer to the *resident homeowner* as the *homeowner* for the remainder of this Article.

103. *See Still Have Questions? We've Got Answers*, *supra* note 54.

104. *See Advanced Topics*, UNISON, https://www.unison.com/faq/#faqAdvanced [https://perma.cc/R2Q8-SBP9] (last visited Mar. 1, 2022).

105. *See Everything You Need to Know About Signing and Receiving Your Funds from Hometap*, HOMETAP, https://www.hometap.com/documents/How-Signing-and-Disbursement-Works_Hometap.pdf [https://perma.cc/N2MB-4PD6] (last visited Mar. 1, 2022).

106. *See How It Works*, NOAH, https://www.noah.co/how-it-works [https://perma.cc/2TDE-KMEB] (last visited Mar. 1, 2022).

legal ownership of the property, as the shared equity financing company is not added to the title.[107]

Shared equity financing can also help homeowners increase the size of their down payment, which would help minimize any mortgage that the homeowner needs to cover the rest of the purchase price.[108] Increasing the down payment lowers monthly payments and makes it possible for the homeowner to access a better mortgage interest rate.[109] These lower, more affordable monthly mortgage payments may also, in turn, decrease the chance that a homeowner defaults on the mortgage.[110] Additionally, using shared equity financing funds to pay a sufficient down payment could allow homeowners to avoid paying for private mortgage insurance, usually required for conventional loans with low down payments.[111]

Shared equity financing may also be more accessible to potential homebuyers because of the less stringent qualifications required for financing. Shared equity investors generally set a lower bar for credit score or credit history than other financing methods, such as a traditional mortgage.[112] Because the equity investment does not add to a homeowner's debt load or show up on credit reports,[113] shared equity financing could also benefit potential homeowners with liquidity issues.

Homeowners may also be drawn to the flexibility of shared equity financing, which offers two options for repayment. One option is that homeowners can wait until the end of the term to repay the investor by using savings, traditional debt products, refinancing using another equity investment, or proceeds from selling the property.[114] Alternatively, the homeowner can prepay by buying out the investor's ownership before the end of the term.[115]

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107. *See id.*; *see also Advanced Topics*, *supra* note 104.

108. Stephanie Colestock, *What Is a Shared Equity Mortgage*, LENDINGTREE (Oct. 5, 2021), https://www.lendingtree.com/home/mortgage/buying-a-home-with-a-shared-equity-mortgage/ [https://perma.cc/DCS2-3DN8].

109. *Id.*

110. *See id.*

111. *Id.*

112. *Compare Still Have Questions? We've Got Answers*, *supra* note 54 (requiring a minimum credit score of 580), *and How Do Homeowners Qualify for a Point Home Equity Investment*, POINT, https://help.point.com/article/15-how-do-homeowners-qualify-for-point [https://perma.cc/NQW3-K4F2] ("Point is much more flexible about your credit than conventional home equity options"), *with* Alexandria White, *What Credit Score Is Required To Buy A House?*, CNBC (Dec. 22, 2020), https://www.cnbc.com/select/credit-score-needed-to-buy-house/ [https://perma.cc/B4D8-UBRU] (stating that the minimum credit score required for conventional loans is 620).

113. *Still Have Questions? We've Got Answers*, *supra* note 54.

114. *See When and How Is Point Paid?*, POINT (Dec. 27, 2019), https://help.point.com/article/18-when-and-how-is-point-paid [https://perma.cc/7NVZ-PSR3].

115. *See Can I Repay Point Before the End of the Term?*, POINT (Dec. 27, 2019), https://help.point.com/article/19-can-i-repay-point-before-the-end-of-the-term [https://perma.cc/K4VW-BWAY] ("You have the flexibility to buy Point out at any time during your term.").

There are, however, numerous disadvantages and risks associated with shared equity financing. Homeowners are likely to suffer a significant reduction in their capital gains since they must share a significant portion of those gains with the investor.[116] For example, suppose in a shared equity agreement, a homeowner contracts to allocate 52.5% of the appreciation of the home at the time of sale to the shared equity investor.[117] If a home appreciates by $100,000, only $47,500 of that appreciation would be destined to the homeowner, and the remaining $52,500 would go to the shared equity investor. If that same homeowner would have been able to pay off a conventional mortgage before the sale of her property, she would not have had to split the gain from the sale with any lender. Thus, a homeowner could end up paying the shared equity investor a lot more than she would have paid a traditional mortgage lender if she had just obtained a conventional mortgage.[118]

Shared equity financing is also an opaque profit center for investors who have designed a system in which it is extremely hard for them to lose. Private shared equity investors shield themselves from loss from the start, as demonstrated in the Point example above. Shared equity financing firms transfer much of the risk of a downturn to homeowners. At the same time, they amplify their returns in a rising market.

While shared equity financing entities claim not to have a prepayment penalty like lenders sometimes do, many of them do not share in any depreciation if a homeowner were to sell or refinance her home within a set period after funding.[119] For instance, if a homeowner sells or refinances her home within the first five years, that homeowner needs to pay Unison the total amount of the investment, plus the investor's share in the equity, without considering any decrease in the market value.[120] So, while the term "prepayment penalty" is not used by these investors, an early payout can mimic the effects of a prepayment penalty.

Investors may also impose various restrictions on the property to limit a homeowner's access to the home equity during the investment period. One such restriction is that homeowners are not compensated for home improvements made during the term of the agreement; investors reap the

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116. *See* Madeline Johnson, *Rent, Buy or Shared-Equity Mortgage: Finding the Best Option*, MORTGAGEORB (Mar. 13, 2019), https://mortgageorb.com/rent-buy-or-shared-equity-mortgage-finding-the-best-option [https://perma.cc/A2NP-XR3V].

117. This is the hypothetical example used Johnson, *supra* note 116.

118. *See id.* Of course, this would depend on how much the homeowner paid on interest expense over the life of the mortgage. *Id.* If a mortgage contained a high interest rate and prevented pre-payment on the mortgage, it is possible still that the conventional loan would be more costly than shared-equity financing. *Id.*

119. *Here's What You Need to Know*, UNISON, https://www.unison.com/faq/ [https://perma.cc/JU4B-WX38] (last visited Mar. 1, 2022).

120. *See id.*

benefits of home improvement without compensating homeowners for these efforts.[121] Another restriction is that some investors do not permit homeowners to rent the property to third parties.[122]

Additionally, shared equity financing agreements can limit homeowners when they seek mortgage financing, because only a few mortgage providers are comfortable working with a borrower who is a party to a shared equity agreement.[123] As a result, some of the shared equity financing firms, like Unison, require homeowners to work with designated lenders, limiting their ability to shop around for the best mortgage terms.[124]

Finally, the lack of familiarity with, and regulation of, private shared equity financing offers borrowers little protection. It is not easy to obtain concrete and detailed information about these private shared equity financing companies and their products. Shared equity financing could easily tempt homebuyers to buy homes that are more expensive than they can reasonably afford, making homebuyers more likely to default if they have no equity cushion when housing prices drop. Shared equity financing may not be covered by the Dodd-Frank Act's definition of "alternative mortgage transaction," nor by the Alternative Mortgage Transaction Parity Act's definition of "alternative mortgage transactions."[125] The lack of consumer protections is reminiscent of a long, problematic history of lending to borrowers unaware of the risks or terms they agreed to.[126]

D. Alternatives to Shared Equity Financing

There are various alternatives to the traditional mortgage and the shared equity financing models of home buying. First, there are a variety of traditional alternatives. Then there are government-supported alternatives. There are also more fintech alternatives. And finally, there are a variety of academic proposals that are in various stages of development.

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121. *Id.* ("During the term of your agreement with Unison, you are required to maintain your property in good condition, subject to normal wear-and-tear. If you do not, when the agreement ends the value of your property will most likely be less than it would have been if it had been properly maintained, and this would not be fair to Unison . . . Since the loss in value would be due to your failure to maintain the property, the Deferred Maintenance Adjustment allocates all of the loss in value due to improper maintenance to you, so that Unison does not share in it.").

122. *Advanced Topics*, *supra* note 104. ("Typically, Unison only invests in owner-occupied property.").

123. *Id.*

124. *Id.*

125. *See* 12 U.S.C. § 3802(1).

126. *See* Alana Semuels, *A House You Can Buy, But Never Own*, THE ATLANTIC (Apr. 10, 2018), https://www.theatlantic.com/business/archive/2018/04/rent-to-own-redlining/557588/ [https://perma.cc/AHE6-QXZ9].

1. Traditional Mortgage Alternatives

Traditional mortgage alternatives include installment sales contracts,[127] contracts-for-deed,[128] and seller financing.[129] These alternatives are very lender-friendly and offer little, if any, protection for borrowers. As the mortgage market grew, these alternatives became less desirable to homebuyers who had access to the mainstream financial system.[130] Thus, these mortgage alternatives were relegated to communities with limited access to the primary mortgage market—communities of color, communities with lower-income residents, and communities with few affordable housing options.[131] Lenders often took advantage of borrowers who turned to these mortgage alternatives and who did not understand the opaque terms of the agreements they signed.[132] Predatory lender behavior made it extremely difficult for borrowers to build and maintain equity.[133] Depending on the agreement, missing just one payment could cause the borrower to lose all the equity put into the home, despite fulfilling all the other agreement conditions over decades (including paying for home repairs).[134]

Besides turning to lenders and investors, homebuyers can also attain financing by withdrawing money out of their retirement accounts, borrowing from family or friends, or taking out funds from any whole life insurance policies that they own.[135] Each of these options comes with its own risk and opportunity cost as well.

2. Government Program Alternatives

The government also offers programs that can keep down payments low to make homeownership more accessible.[136] Government programs are

127. *See* Sarah Mancini & Margot Saunders, *Land Installment Contracts: The Newest Wave of Predatory Home Lending Threatening Communities of Color*, FED. RSRV. BANK BOS. (Apr. 13, 2017), https://www.bostonfed.org/publications/communities-and-banking/2017/spring/land-installment-contracts-newest-wave-of-predatory-home-lending-threatening-communities-of-color.aspx [https://perma.cc/8Z3Q-TDR8].

128. Semuels, *supra* note 126.

129. *See* Kiah Treece & Mike Cetera, *Owner Financing: What It Is and How It Works*, FORBES (Jan. 11, 2021, 9:13 AM), https://www.forbes.com/advisor/mortgages/owner-financing/ [https://perma.cc/8988-PMA8]; *see* Julia Kagan, *Seller Financing Definition*, INVESTOPEDIA (Dec. 11, 2020), https://www.investopedia.com/terms/s/seller-financing.asp [https://perma.cc/NEF2-L6V9].

130. *See* Semuels, *supra* note 126.

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. Dan Rafter, *7 Alternatives to a Traditional Mortgage for Buying a Home*, MORTGAGELOAN, https://www.mortgageloan.com/7-alternatives-traditional-mortgage-buying-home-9761 [https://perma.cc/H5S5-G4YU] (last visited Mar. 1, 2022).

136. *See Mortgages*, USAGOV, https://www.usa.gov/mortgages [https://perma.cc/923S-GUC6] (last visited Mar. 1, 2022).

heavily regulated and emphasize borrower protection, which significantly reduces the risk that lenders might take advantage of borrowers.

The federal government supports homebuyers through Fannie Mae, Freddie Mac, the Federal Housing Administration, the U.S. Department of Veterans Affairs, the Department of Housing and Urban Development, and more.[137] These governmental departments and government-sponsored enterprises all offer mortgage assistance to eligible homebuyers.[138]

State and local governments also offer similar programs to incentivize and help aspiring homeowners, especially first-time homebuyers.[139] Many of these programs offer down payment grants, no-down-payment mortgages, favorable interest rates, and sometimes even federal tax breaks.[140] Some of these programs may target particular geographic areas or certain professions.[141]

3. Other Fintech Alternatives

In addition to shared equity financing, fintech companies have sought to expand financing options in ways other than these traditional models. One alternative is co-investing in a home's value (e.g., Haus).[142] Co-investment requires the homeowner to make monthly payments that increase or decrease the homeowner's ownership share depending on the size of the payment.[143] Like the new shared equity financing products, one benefit of co-investment is that homeowners retain title to the property.[144] Additionally, under co-investment, no additional mortgage is needed, and the homeowner only has to put down a minimal portion of the purchase price.[145] For example, Haus covers ninety percent of the purchase price by paying in cash, and the homeowner only needs to put down the remaining ten percent. Haus requires lower monthly payments than traditional month-

137. Paul Esajian, *12 Homeownership Assistance Programs You Should Know About*, FORTUNEBUILDERS, https://www.fortunebuilders.com/homeownership-programs/ [https://perma.cc/3THE-RR8H] (last visited Mar. 1, 2022).

138. *Id.*

139. *Id.*

140. *Special Loan Programs*, CFPB, https://www.consumerfinance.gov/owning-a-home/loan-options/special-loan-programs/ [https://perma.cc/FAK6-ZCDK] (last visited Mar. 1, 2022); *First-Time Home Buyer Programs by State*, NERDWALLET (July 27, 2021), https://www.nerdwallet.com/article/mortgages/first-time-home-buyer-programs-by-state [https://perma.cc/W3MR-7ERL].

141. *Special Loan Programs*, *supra* note 141.

142. *See A Smarter Way to Own*, HAUS, https://haus.com/ [[https://perma.cc/D4CQ-99J8] (last visited Mar. 2, 2022).

143. *See FAQ*, HAUS, https://haus.com/faq [https://perma.cc/6DC9-DDDR] (last visited Mar. 2, 2022).

144. *Id.*

145. *Id.*

ly mortgages, and homeowners can purchase more equity throughout the term.[146] In some ways, Haus's model is like shared equity on steroids.

Some investors are also modernizing the traditional lease-to-own model, which has a fairly negative track record for prospective homeowners. One such investor is Fleq. Upon establishing a partnership with a homeowner, it shakes up the distinction between tenant and owner by allowing the homeowner to fill aspects of both roles simultaneously.[147] The Fleq partnership model creates two roles for the aspiring homeowner partner to fill: partial owner and tenant.[148] As the "partial owner" the homeowner has to pay for her ownership share of expenses, such as taxes, insurance, and repairs.[149] As the "tenant" of that partnership, the same homeowner is obliged to pay rent to Fleq based on the portion of the home that she does not own.[150] The homeowner begins with a minimal initial equity contribution and can purchase as much equity as she may want from Fleq.[151] However, this flexibility does come with some caveats. The property needs to be valued every year, which means that appraisal costs can add up because the price to purchase equity depends on the current property value.[152]

The financing alternatives described above are not exhaustive and could not possibly cover all the available products on the market, especially as fintech companies are constantly creating new ways of divvying up the bundle of rights of real property. But it does give a sense of the ferment that is happening in the traditionally stodgy realm of homeownership at the beginning of the twenty-first century. As with the relatively more straightforward shared equity financing, these new models likely present traps for the unwary.

4. Academic Proposals

Scholars have also proposed a range of financing alternatives to increase homeownership accessibility for low and moderate-income households. For example, researchers affiliated with the American Enterprise Institute have created the Wealth Building Home Loan, which has been

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146. *Id.*

147. *See* Kelsey Ramírez, *Here's How to Use Fleq to Buy a Home Without a Mortgage*, HOUSINGWIRE (Jan. 20, 2020, 6:01 PM), https://www.housingwire.com/articles/heres-how-to-use-fleq-to-buy-a-home-without-a-mortgage/ [https://perma.cc/7URE-NCSG]; *see also Frequently Asked Questions*, FLEQ, https://fleq.com/faqs/ [https://perma.cc/QE2F-7C5H] (last visited Mar. 1, 2022).

148. Ramírez, *supra* note 147; FLEQ, *supra* note 147.

149. Ramírez, *supra* note 147; FLEQ, *supra* note 147.

150. Ramírez, *supra* note 147; FLEQ, *supra* note 147.

151. *How It Works*, FLEQ, https://fleq.com/#how-it-works [https://perma.cc/U3UY-PM5E] (last visited Mar. 1, 2022).

152. *Id.*

brought to the market through a relatively modest initiative.[153] This is a fifteen-year loan with a low fixed interest rate, little or no down payment, and no additional fees.[154] However, while this loan has very attractive terms, it is also based on strict underwriting criteria,[155] limiting its availability to potential homebuyers.

Researchers at the Board of Governors of the Federal Reserve System have proposed a Fixed Cost of Funds Index Mortgage, which also offers attractive terms for homeowners.[156] This product effectively credits the homeowner with any decrease in interest rates, based around the Cost of Funds Index, that occurs during the loan term.[157] Reducing the amount applied toward interest increases the monthly payment portion applied to repaying the outstanding principal.[158] This allows homeowners to accumulate equity much more quickly, eliminating the need for large down payments and protecting the investor from prepayment risks.[159]

The Urban Institute researchers have proposed a variety of housing voucher reforms that would provide down payment assistance to new homeowners.[160] One such reform is a down-payment subsidy targeted at first-time homebuyers under the voucher program.[161] These researchers believe that reallocating funds from rent subsidy programs to the revised voucher program would increase homeownership in low-income households.[162] Another suggested reform is to allow the Low-Income Housing Tax Credit to be used for homeownership, in addition to rental housing.[163] Both of these proposals focus on reforming already-existing low-income housing programs to support homeownership, not just rent assistance.[164]

153. *See* Lisa Prevost, *A New Way to Build Equity*, N.Y. TIMES (Sept. 18, 2014), https://www.nytimes.com/2014/09/21/realestate/a-new-way-to-build-equity.html [https://perma.cc/584J-KX46].

154. *See id.*

155. *See id.*

156. Wayne Passmore & Alexander von Hafften, *Financing Affordable and Sustainable Homeownership with Fixed-COFI Mortgages* 1, 4–14 (Fed. Rsrv. Bd., Working Paper No. 2018-009, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3120333 [https://perma.cc/2VC4-ESAH].

157. *Id.* at 4–6.

158. *Id.* at 4–7.

159. *Id.* at 7–9.

160. EDGAR O. OLSEN, THE URB. INST., PROMOTING HOMEOWNERSHIP AMONG LOW-INCOME HOUSEHOLDS 1–3 (2007), https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF [https://perma.cc/GEB8-H9CS].

161. *See id.* at 1–3, 8–11.

162. *Id.* at 11–12.

163. *Id.* at 1–4, 12–13.

164. *See id.*; *Help Buying a New Home*, USAGOV, https://www.usa.gov/buying-home [https://perma.cc/RS4F-94F8] (last visited Mar. 2, 2022).

5. Alternatives for Current Homeowners

Current homeowners seeking to access the equity in their homes can rely on various traditional products.[165] These products offer many of the same benefits as shared equity financing, depending on the profiles of the homeowners and the companies they seek to do business with. Like many of the aforementioned fintech products, Home Equity Lines of Credit ("HELOCs") also offer the benefit of disbursing funds on an as-needed basis, up to a pre-approved credit limit, and interest may be tax deductible if the funds were spent for qualified purposes.[166] Repayment comes in the form of monthly payments based on the amount borrowed and the current interest rate.[167] Reverse mortgages, on the other hand, typically disburse funds monthly, but funds could also be disbursed in a line of credit, lump-sum payment, or combination of these three methods.[168] No payment of principal or interest is required until the entire loan becomes due.[169]

Fintech companies have also sought to expand options for current homeowners. Homeowners can tap into their home's equity through a residential sale-leaseback (e.g., EasyKnock).[170] Under this arrangement, homeowners sell their house and lease it back as a tenant.[171] This gives homeowners quick cash because they can sell the house immediately, and it can be helpful when homeowners find it difficult to obtain a new mortgage. Some programs of this sort also allow the homeowner-turned-tenant to repurchase the house.[172] However, it is important to note that this is not a homeownership product because the homeowner *sold* the home, so the former homeowner no longer owns it.

Homeowners can also use a trade-in to unlock the current home's equity with an "Equity Advance Loan" before selling the home. Investors, such as Knock, purchase new homes on behalf of homeowners and then qualify the homeowner for an interest-free bridge-like loan from the homeowner's remaining equity in the old home. This "Equity Advance Loan" effectively unlocks the homeowners' equity in the old house before

165. The authors consider traditional products to include home equity loans, Home Equity Lines of Credit ("HELOCs"), and reverse mortgages.

166. *See Home Equity Loans and Home Equity Lines of Credit*, FTC (Dec. 2021) https://www.consumer.ftc.gov/articles/home-equity-loans-and-home-equity-lines-credit [https://perma.cc/U9D5-MDSS].

167. *Id.*; Daniel Kurt, *A Guide for Home Equity Loans and HELOCs*, INVESTOPEDIA (Sept. 11, 2021), https://www.investopedia.com/mortgage/heloc/ [https://perma.cc/ELN5-JRDQ].

168. *See Reverse Mortgages*, FTC (June 2015), https://www.consumer.ftc.gov/articles/0192-reverse-mortgages [https://perma.cc/Y43Z-NHBH].

169. *Id.*

170. *See Frequently Asked Questions*, EASYKNOCK, https://www.easyknock.com/faqs [https://perma.cc/8EN5-HCWL] (last visited Mar. 1, 2022).

171. *See id.*

172. *See id.*

sale.[173] This helps homeowners avoid paying two mortgages for both the old and new home before the old home sells. However, this product only unlocks equity for the sole purpose of switching homes.[174]

E. More Regulation Ahead?

In the early 2000s, homeowners were offered "easy" money on opaque terms.[175] That scenario did not end well once the financial crisis hit, and a lot of the easy money was anything but once homeowners began to default.[176] Homeowners who are attracted to shared equity financing agreements and similar fintech innovations may find themselves regretting the "easy" money once they see how the numbers can work against them.

Private companies have generally crafted many protections for themselves, and consumers are left to fend for themselves. The private sector has historically created mortgage alternatives that benefit investors more than homeowners. While private shared equity financing schemes are relatively new, it would be unsurprising to see consumer protection issues arise. This will be particularly likely as homeowners begin to face large payments to investors once the terms of the financing agreements expire.

The Federal Housing Administration had become concerned that shared equity mortgages were a source of abuse when it eliminated such mortgages from its roster of products in 1988.[177] Because of the lack of familiarity with novel shared equity financing and all the risks that come along with it, it can be expected that state and federal regulators will take a close look at shared equity financing and other fintech innovations before their market share grows much further. The Consumer Financial Protection Bureau might also question whether these innovative products help consumers in the financial marketplace. Additionally, State Attorneys General might wonder whether such financing options belong in a fair marketplace. And courts might question whether some of them should be viewed as equitable mortgages under the common law and therefore afford homeowners with the same protections afforded to mortgagors.

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173. *See Simple and Certain Solutions*, KNOCK, https://www.knock.com [https://perma.cc/T7V8-6J65] (last visited Mar. 1, 2022).

174. *See Frequently Asked Questions*, KNOCK, https://www.knock.com/faq [https://perma.cc/N8HA-CS3H] (last visited Mar. 1, 2022).

175. *See* MARTIN NEIL BAILY, ROBERT E. LITAN & MATTHEW S. JOHNSON, THE ORIGINS OF THE FINANCIAL CRISIS 7, 8, 27, 33, 45 (2008), https://www.brookings.edu/wp-content/uploads/2016/06/11_origins_crisis_baily_litan.pdf [https://perma.cc/V7WC-TNRL].

176. *See id.* at 18, 21.

177. *See* MYRON C. WEINSTEIN, 29 NEW JERSEY PRACTICE: LAW OF MORTGAGES § 3.10 (2021).

The bottom line is that today's homebuyers interested in shared equity financing and similar innovative products should fully understand the terms of the agreement before signing on the dotted line.

V. CONCLUSION

We tend to think that the only way to do homeownership is the way that we have been doing it during our lifetime and that of our parents. But the way that homeownership can express itself can change and is changing. The new models described above show some promise and some perils for coming generations of homeowners. Some of the models have the potential to create more affordable housing. Others, however, present risks to the unwary and should be vetted carefully before they are adopted on a wide scale.