

LOCAL RESPONSES TO TODAY'S HOUSING CRISIS: PERMANENTLY AFFORDABLE HOUSING MODELS

Julie Gilgoff[†]

CONTENTS

INTRODUCTION	588
I. COMMUNITY LAND TRUSTS	589
A. <i>Permanently Affordable Housing Models Rectify the Consequences of Discriminatory Housing Policies: Benefits of CLTs</i>	591
II. A COMPARATIVE STUDY OF CLTs: NEW YORK AND THE BAY AREA	595
A. <i>New York City</i>	596
1. NYCHA	596
2. Mitchell-Lama Housing	598
3. Mandatory Inclusionary Housing	600
4. An Alternative Strategy: Converting Vacant Land to Permanently Affordable Housing....	601
B. <i>The Bay Area of California</i>	607
III. STRATEGIES TO SUPPORT THE GROWTH OF LAND BANKS, LIMITED INCOME COOPS AND COMMUNITY LAND TRUSTS	614
A. <i>Preserving Tax-Delinquent Properties for Affordable Housing, Rather Than Auctioning the Properties to Private Bidders</i>	615
B. <i>Providing Favorable Loans and Allocating Housing Funds to Permanently Affordable Models</i>	617
C. <i>Creating a Favorable Tax Structure</i>	618
D. <i>Additional Oversight for Banks</i>	621
CONCLUSION	624

[†] Julie Gilgoff is a graduate of CUNY School of Law, class of 2017. She served as a student attorney in Main Street Legal Services's Community and Economic Development clinic, which addresses issues of housing and economic development. She would like to thank Professor Andrea McArdle for her supervision of this project and her invaluable instruction in the class Land Use, as well as the CUNY Law Review staff for their dedication in promoting social change-related scholarship.

INTRODUCTION

The housing crisis has reached unprecedented levels as the cost of living in global cities¹ has become too expensive for all but the exorbitantly wealthy.² Financial theorists warn that these cities are to become “citadels for the rich”³ if the current trend continues.⁴ In a diversified economy, this would be a catastrophe for all, as skilled and unskilled laborers, service workers, and professionals are interdependent on one another to provide essential services. Low-income communities commuting hours each day to reach essential jobs is not a viable solution.

When the housing costs in Rochester, Minnesota, became too high for hospital workers, the Mayo Clinic responded by helping to fund a Community Land Trust (“CLT”) in 2002.⁵ This employer-sponsored CLT, called First Homes, provided affordable housing for employees close to the hospital, as was in the interest of the employer and patients of the hospital alike.⁶ Nobody wants to imagine a hospital worker drawing blood or administering medicine incorrectly, or failing to provide sanitary conditions because of workers’ inadequate and inconvenient living conditions. Similarly, the state of California recently passed a bill to support affordable housing for teachers, so that they may live closer to the schools where they teach.⁷

In response to the low- to moderate-income communities who have been displaced from their neighborhoods,⁸ local govern-

¹ Mary Pennisi, *The Global City: Globalizing Local Institutions*, 11 J. INT’L BUS. & L. 111, 113-14 (2012) (defining the “global city” as “the epicentre of the international market where fiscal dealings, upper-level management, and industrial coordination are highly concentrated” and the “control or command centre[] within the global networks of financial and business service (or ‘producer service’) firms” (internal quotations and citations omitted)).

² See generally MILOON KOTHARI, *THE GLOBAL CRISIS OF DISPLACEMENT AND EVICTIONS: A HOUSING AND LAND RIGHTS RESPONSE* (2015), http://www.rosalux-nyc.org/wp-content/files_mf/kothari11.pdf [<https://perma.cc/P5YN-62XW>].

³ Emily Badger, *Are Global Cities Really Doomed to Become ‘Citadels’ for the Rich?*, CITY-LAB (June 17, 2013), <http://www.citylab.com/work/2013/06/are-global-cities-really-doomed-become-citadels-rich/5929> [<https://perma.cc/TP8A-55TR>].

⁴ See KOTHARI, *supra* note 2.

⁵ Dwan Packnett, *The First Homes Community Land Trust* (Lincoln Inst. of Land Policy, Working Paper No. 05DP1, 2005), <http://cltnetwork.org/wp-content/uploads/2014/01/2005-The-First-Homes-CLT.pdf> [<https://perma.cc/PRH2-5J98>].

⁶ See generally *First Homes*, COMMUNITY-WEALTH.ORG, <http://community-wealth.org/content/first-homes> [<https://perma.cc/JM5P-ULFT>].

⁷ S.B. 1413, 2015-2016 Reg. Sess. (Cal. 2016) (enacted).

⁸ Karen Chapple, *Displacement: The Misunderstood Crisis*, BERKELEY BLOG: ECON. (Aug. 28, 2015), <http://blogs.berkeley.edu/2015/08/28/displacement-the-misunderstood-crisis/> [<https://perma.cc/5ATZ-CTZW>] (explaining that displacement is dis-

ments and community stakeholders have implemented a variety of strategies that aim to create innovative affordable housing solutions. This Note argues that permanently affordable housing initiatives must be implemented on a larger scale to prevent the displacement of low- and middle-income residents at the current, unprecedented rate.⁹

In Section I, this Note introduces the CLT model and explores the economic and social benefits of permanently affordable housing. It argues that since the government has historically played an active role in incentivizing home ownership, it must continue to do so by supporting permanently affordable housing initiatives. The communities facing displacement today who would benefit from CLTs are the same groups who were targeted by discriminatory policies like redlining and reverse redlining. The government's role today is essential in ameliorating the harm these policies have caused.

Although the manifestation of the housing crisis differs in each municipality, there are similarities in rapidly gentrifying cities around the country. Section II of this Note examines permanently affordable housing initiatives in New York City and the Bay Area of California, illustrating the viability and challenges of implementing CLTs in urban hubs.

Section III of this Note offers several policy recommendations that federal, state, and local governments, as well as lending institutions should take in order to support the creation of permanently affordable housing.

The initiatives discussed in this Note do not offer a panacea to widespread displacement of low- to moderate-income communities. However, in examining alternatives that have been successful in cities around the country, this Note argues that they should be implemented on a larger scale.

I. COMMUNITY LAND TRUSTS

A shortcoming of many low- to moderate-income housing models that have been tried in the past is that the terms of affordability often expire after a set number of years.¹⁰ Given the

tinct from gentrification, and that the two words should not be used interchangeably).

⁹ See KOTHARI, *supra* note 2, at 1, 2 (discussing the impact of gentrification on the unprecedented global housing crisis).

¹⁰ See, e.g., *infra* Section II (discussing Mitchell Lama Housing and Limited Equity Housing Cooperatives in New York); see also *What Happens to LIHTC Properties After Affordability Requirements Expire?*, POL'Y DEV. & RES. EDGE, Aug. 20, 2012, <https://www>

scarcity and commodification of land,¹¹ constructing replacement units from scratch is no longer a viable option. Community Land Trusts (“CLTs”) address this issue by creating affordable housing whose terms do not expire. CLTs are nonprofit entities that acquire land with the goal of maintaining control in perpetuity for a community use such as affordable housing.¹² The first Community Land Trusts in America were an outgrowth of the civil rights movement in the Deep South, designed to help African American farmers gain access to land ownership,¹³ but they are now thriving in cities nation-wide because of their effectiveness in resisting mass resident displacement.¹⁴

.huduser.gov/portal/pdredge/pdr_edge_research_081712.html [https://perma.cc/W97U-5YLG] (describing the Low-Income Housing Tax Credit, which requires private developers to keep units affordable for first 15 years, and then 30 years). Short-sighted solutions may have adequately addressed immediate housing needs, reflecting the difficulty of getting private developers to agree to build affordable units, as well as legal complications to creating legal requirements of affordability in perpetuity. See Claire Zippel, *Why Affordable Housing Doesn't Stay Affordable Forever*, GREATER GREATER WASH. (Nov. 21, 2016), <https://ggwash.org/view/43574/why-affordable-housing-doesnt-stay-affordable-forever> [https://perma.cc/G45Y-Y8PP] (proposing that federal rental subsidies that presently expire could be made permanent).

¹¹ See *The Scarcity of Land: Land Suitable for Development is Limited, After All*, ECONOMIST: FREE EXCHANGE (June 18, 2009), http://www.economist.com/blogs/freeexchange/2009/06/the_scarcity_of_land [https://perma.cc/9WYD-PFV3] (discussing whether land scarcity is a valid explanation of the current housing shortage). Although there is an abundance of undeveloped land, increased populations moving into urban centers, as well as a greater trend towards housing rentals as compared to home ownership, have created housing scarcity and commodification of urban land. See generally JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA'S RENTAL HOUSING—EXPANDING OPTIONS FOR DIVERSE AND GROWING DEMAND* (2015), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/ch_1_rental_housing_demand_from_americas_rental_housing_2015_web.pdf [https://perma.cc/9QLA-U7GC].

¹² BRIAN COOK & ANDREW L. KALLOCH, OFFICE OF THE N.Y.C. COMPTROLLER, *BUILDING AN AFFORDABLE FUTURE: THE PROMISE OF A NEW YORK CITY LAND BANK 4* (2016), http://comptroller.nyc.gov/wp-content/uploads/documents/The_Case_for_A_New_York_City_Land_Bank.pdf [https://perma.cc/29AQ-X3AK] [hereinafter *BUILDING AN AFFORDABLE FUTURE*].

¹³ Oksana Mironova, *The Value of Land: How Community Land Trusts Maintain Housing Affordability*, URBAN OMNIBUS (Apr. 29, 2014), <http://urbanomnibus.net/2014/04/the-value-of-land-how-community-land-trusts-maintain-housing-affordability> [https://perma.cc/9FLM-XQZ8].

¹⁴ In 2007, The Lincoln Institute reported there to be 186 CLTs nation-wide, the largest being the Burlington Community Land Trust (BCLT) in Vermont. Yesim Sungu-Eryilmaz & Rosalind Greenstein, *A National Study of Community Land Trusts* (Lincoln Inst. of Land Policy, Working Paper No. 07YS1, 2007), http://www.lincolnst.edu/pubs/dl/1274_Sungu-Eryilmaz%20Final.pdf [https://perma.cc/3JWK-NMJZ]; Rosalind Greenstein & Yesim Sungu-Eryilmaz, *Community Land Trusts: Leasing Land for Affordable Housing*, LAND LINES, Apr. 2005, at 8, 8, http://www.lincolnst.edu/sites/default/files/pubfiles/1008_landlines%20final%2004.05.pdf [https://perma.cc/K74S-4489].

As a “steward” of the land, a CLT is economically advantageous, preserving and recycling public subsidies.¹⁵ Through a 99-year ground lease whereby the CLT leases the land to residents,¹⁶ the CLT allows for usage by a qualifying low-to-middle-income resident and maintains affordability for future homeowners or tenants.

Many CLTs are seeded with vacant or mismanaged property in the city’s control, or with properties transferred to a CLT by the individual owner or government entity that acknowledge that the property may be better maintained with more community involvement.¹⁷ The initial investment in affordable housing through tax subsidy or donation of land is recycled by the resale restrictions contained in the lease.¹⁸ No matter the improvements done on the house or the property appreciation, the CLT restricts tenants from reselling the property at market rate.¹⁹

A. *Permanently Affordable Housing Models Rectify the Consequences of Discriminatory Housing Policies: Benefits of CLTs*

There are several long-term benefits of developing and subsidizing permanently affordable housing through CLTs. The government would be saving money in the long run, rather than recreating new housing once the terms of affordability expire.²⁰ The cost-effectiveness of permanently affordable housing models is significant. One need only compare the number of years of affordable housing a CLT provides with each dollar of the public subsidy spent.²¹ Tom Angotti, Professor of Urban Affairs and Plan-

¹⁵ KELLY WEISS, NEIGHBORHOOD HOUS. AND CMTY. DEV. & AUSTIN HOUS. FIN. CORP., THE COMMUNITY LAND TRUST REPORT: CREATING PERMANENT AFFORDABLE HOMEOWNERSHIP OPPORTUNITIES IN AUSTIN, TEXAS 10 (2005), <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/pdf/austincommtrust.pdf> [<https://perma.cc/2XH4-ATSB>].

¹⁶ Issuing a 99-year ground lease to tenants while the CLT holds ownership of the land upon which the house is built is the most common model of CLT. Other models include the CLT maintaining title while the improvements on the land are owned by the owner, or the resident may own, and thereby pay taxes on the house and land itself. Taxation of CLT property where the land and house may be taxed separately is further discussed in this article. See *infra* Section III.C.

¹⁷ See discussion *infra* Section I.

¹⁸ WEISS, *supra* note 15, at 10.

¹⁹ NAT’L CMTY. LAND TR. NETWORK, THE CLT TECHNICAL MANUAL ch. 17 (Kirby White ed., 2011), <http://cltnetwork.org/wp-content/uploads/2014/01/MASTER-CLT-MANUAL.pdf> [<https://perma.cc/K8YZ-GZCA>].

²⁰ Peter Marcuse, *Blog #54 – Community Land Trusts as Transformative Housing Reforms*, PETER MARCUSE’S BLOG (July 23, 2014), <https://pmarcuse.wordpress.com/2014/07/23/blog-54-community-land-trusts-as-transformative-housing-reforms/> [<https://perma.cc/J3T4-EV2C>].

²¹ See Tom Angotti, *Community Land Trusts and Low-Income Multifamily Rental Hous-*

ning at Hunter College and the City University of New York Graduate Center, cites a “preliminary analysis [that] suggests that the Cooper Square CLT [in New York City] more effectively spends public subsidies than any other City programs for low-income multifamily housing.”²² The preservation of diversity within American cities is a stated goal of many elected officials, and the development of permanently affordable housing is a cost-effective way to achieve that goal.

As well as economic benefits, there are also social benefits to permanently affordable housing like CLTs. Permanently affordable housing initiatives help build communities and stabilize neighborhoods, maximizing social capital by preventing displacement. The type of investment in neighborhoods that becomes possible when residents know the needs and concerns of the place in which they live include belonging to community boards, cultivating community gardens, participating in neighborhood groups, and engaging in the democratic process.²³

Further, cooperatively owned property, as exists in the CLT model, provides for democratic management of housing. By involving residents, public officials, and neighborhood leaders on the coop or CLT boards, educated decisions about expenditures and investment can be achieved.²⁴ Affordable housing that builds a sense of responsibility and ownership among residents to take care of the property rather than allowing it to fall into disrepair, is in the best interest of residents and investors alike, and serves as an example of how some failed models of housing projects could have been avoided.²⁵

ing: *The Case of Cooper Square, New York City* 17 (Lincoln Inst. of Land Policy, Working Paper No. 07TA1, 2007).

²² *Id.*

²³ “In 1984, two church associations came together to form the Time of Jubilee Community Land Trust (TJCLT) with the mission of revitalizing a blighted section of Syracuse, New York. The TJCLT and its development affiliate, Jubilee Homes of Syracuse Inc., partnered with the city of Syracuse to develop vacant city-owned land in southwest Syracuse into affordable single-family residences. By 1992, Jubilee Homes had developed and sold 26 dwellings, with the TJCLT taking ownership of the underlying land in order to oversee the long-term affordability of the housing units and the preservation of the city’s subsidy. Since then, the TJCLT and Jubilee Homes . . . have also joined with local partners to create a homeownership education program for land trust home-owners and a business resource center to aid local small, minority- and women-owned businesses.” Ryan Sherriff, *Affordable Homeownership*, URBAN LAND, Sept. 2009, at 128, 131, http://www.homesthatlast.org/wp-content/uploads/2009/12/CLTarticle_UL_Sept09.pdf [<https://perma.cc/L9QP-TKFP>].

²⁴ Marcuse, *supra* note 20.

²⁵ The public housing of other cities such as St. Louis and Chicago that were demolished due to disrepair, Jarrett Murphy, *Worst Case for Public Housing Seen in 2 Mid-*

Despite the benefits of CLTs in addressing the affordable housing crisis, this model has not been widely embraced because of the way in which it runs counter to the capitalist myth that the free market and private development will address housing needs.²⁶ The United States government has steered housing development in significant ways: tax incentives to encourage homeownership have been embraced as a part of our American system, whereby homeowners “may deduct mortgage interest and property tax payments as well as certain other [home-related] expenses from their federal taxable income.”²⁷ Helping low- to moderate-income communities acquire adequate and stable housing should likewise be incentivized by exempting permanently affordable housing from certain taxes, and transferring vacant property dedicated to this purpose.

The government’s role in creating the current housing crisis is exemplified by the practice of redlining.²⁸ In the late 1930s, the Federal Home Owner’s Loan Corporation (“HOLC”) began using a four-tiered rank system that gave Black homebuyers the lowest rating, and therefore, little likelihood that they would receive a federally-insured mortgage.²⁹ Post World War II, the Federal Bureau of Public Roads targeted low-income communities of color for redevelopment projects (such as highway construction) that would displace them in order to facilitate the commute of white suburbanites.³⁰ Further, the U.S. legal system allowed the continuation

western Cities, CITYLIMITS.ORG (Mar. 14, 2017), <http://citylimits.org/2017/03/14/worst-case-for-public-housing-seen-in-2-midwestern-cities/> [<https://perma.cc/FVX9-8MS6>], can be contrasted with the goals of New York’s Urban Homestead Assistance Board that aims to “empower[] low- to moderate-income residents to take control of their housing and enhance communities by creating strong tenant associations and lasting affordable co-ops.” *About UHAB*, URBAN HOMESTEADING ASSISTANCE BOARD, <http://uhab.org/about> [<https://perma.cc/K483-NDML>]. The limited equity coops that UHAB helps create and CLTs are both forms of permanently affordable housing that overlap in ways discussed below.

²⁶ For example, Mayor de Blasio’s affordable housing plan relies on private developers to include affordable units instead of funding CLT projects. *See infra* Part II.

²⁷ *What Are the Tax Benefits of Homeownership?*, in TAX POLICY CTR., THE TAX POLICY BRIEFING BOOK: A CITIZENS’ GUIDE TO THE TAX SYSTEM AND TAX POLICY, <http://www.taxpolicycenter.org/briefing-book/what-are-tax-benefits-homeownership> [<https://perma.cc/6SEN-K78G>].

²⁸ *See* Camila Domonoske, *Interactive Redlining Map Zooms in on America’s History of Discrimination*, NPR (Oct. 19, 2016, 3:22 PM), <http://www.npr.org/sections/thetwo-way/2016/10/19/498536077/interactive-redlining-map-zooms-in-on-americas-history-of-discrimination> [<https://perma.cc/6THF-CX8J>].

²⁹ *Id.*

³⁰ *See generally* RAYMOND A. MOHL, THE INTERSTATES AND THE CITIES: HIGHWAYS, HOUSING, AND THE FREEWAY REVOLT (2002), <http://www.prrac.org/pdf/mohl.pdf> [<https://perma.cc/DC72-QD42>]. “[B]y the mid-1960s, when interstate construction was well underway, it was generally believed that the new highway system would ‘dis-

of racially restrictive housing covenants well into the mid-1900s.³¹ Finally, even after Congress passed the Community Reinvestment Act (“CRA”) of 1977, which was meant to regulate redlining practices, there are inadequate enforcement schemes to hold lending institutions accountable.³² Banks are not penalized for predatory lending or required to provide for the banking needs of low-income communities in which they do business, as they are required to do by the statute.³³

Redlined communities were also targeted decades later by policies such as “reverse redlining,” whereby minority groups were singled out for predatory loans that offered onerous mortgage terms that set them up to default.³⁴ According to a 2010 report by the Center for Responsible Lending, while about 4.5% of white borrowers lost their homes to foreclosure during the mid-to-late 2000s, Black and Latino borrowers had 7.9% and 7.7% foreclosure rates, respectively.³⁵ That means that Blacks and Latinos were more than

place a million people from their homes before it [was] completed.’ A large proportion of those dislocated were African Americans, and in most cities the expressways were routinely routed through black neighborhoods.” *Id.* at 2-3 (footnote omitted); see also Raymond A. Mohl, *The Interstates and the Cities: The U.S. Department of Transportation and the Freeway Revolt, 1966-1973*, 20 J. POL’Y HIST. 193 (2008).

³¹ See, e.g., Charles Abrams, *Stuyvesant Town’s Threat to our Liberties: Government Waives the Constitution for Private Enterprise*, COMMENTARY (Nov. 1, 1949) <https://www.commentarymagazine.com/articles/stuyvesant-towns-threat-to-our-libertiesgovernment-waives-the-constitution-for-private-enterprise/> [<https://perma.cc/M94V-KCZL>].

³² See discussion *infra* Section III.D.

³³ See discussion *infra* Section III.D. Without adequate government enforcement, and mandatory resident-involvement in coming up with ratings, banks almost always receive passing scores, despite falling short of meeting the credit needs of low-income communities in which they do business. At least 97% of banks receive passing scores despite evidence that many have engaged in discriminatory practices (during the 2008 foreclosure crisis, for example). DARRYL E. GETTER, CONGRESSIONAL RESEARCH SERV., THE EFFECTIVENESS OF THE COMMUNITY REINVESTMENT ACT 9 (2015), <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/cra/reports/CRS-The-Effectiveness-of-the-Community-Reinvestment-Act.pdf> [<https://perma.cc/M44L-UGWX>]. In making resident-input optional rather than mandatory, and in providing neither training nor monetary reimbursement for residents engaging in this process, the enforcement scheme needs improvement. See Oscar Perry Abello, *Formerly Redlined Brooklyn Community Now Regulates Banks*, NEXT CITY (July 5, 2016), <https://nextcity.org/daily/entry/formerly-redlined-brooklyn-community-regulates-banks> [<https://perma.cc/E7B2-PAMN>].

³⁴ Natasha M. Trifun, *Residential Segregation After the Fair Housing Act*, 36 HUM. RTS., Fall 2009, at 14, 18, https://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol36_2009/fall2009/residential_segregation_after_the_fair_housing_act.html [<https://perma.cc/6J4E-BMH3>].

³⁵ DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 8 (2010), <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf> [<https://perma.cc/XH6F-QPHC>].

70% more likely to lose their homes to foreclosure during that period.³⁶ Even those with credit scores, loan sizes and incomes similar to those of whites were more likely to receive subprime loans during the housing boom, and thus were more likely to default on their loan payments due to reverse-redlining practices.³⁷

Although some see the displacement of low-income communities as an inevitable outgrowth of development and gentrification,³⁸ the process can be regulated through government intervention. “While gentrification may bring much-needed investment to urban neighborhoods, displacement prevents these changes from benefitting residents who need them the most.”³⁹ There is a vicious cycle of gentrification, whereby individuals are priced out of one neighborhood and move to the next, pricing out the residents there, only to see that area grow unaffordable as well.⁴⁰ Because it is in society’s interest to prevent the consequences that come with mass evictions, homelessness, as well as the transformation of cities into “citadels for the rich,”⁴¹ the creation of additional permanently affordable housing must be immediately pursued.

II. A COMPARATIVE STUDY OF CLTs: NEW YORK AND THE BAY AREA

New York City and the Bay Area of California are among the most expensive and rapidly-gentrifying metro areas in the coun-

³⁶ *Id.*

³⁷ Renae Merle, *Minorities Hit Harder by Foreclosure Crisis*, WASH. POST, (June 19, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/18/AR2010061802885.html> [https://perma.cc/9EZE-JVQ6].

³⁸ Richard Florida, *The Complicated Link Between Gentrification and Displacement*, CITY-LAB (Sept. 8, 2015), <http://www.citylab.com/housing/2015/09/the-complicated-link-between-gentrification-and-displacement/404161> [https://perma.cc/HN2L-4EBK].

³⁹ CAUSA JUSTA: JUST CAUSE, DEVELOPMENT WITHOUT DISPLACEMENT: RESISTING GENTRIFICATION IN THE BAY AREA 7 (2014), <http://www.acphd.org/media/343952/cjic2014.pdf> [https://perma.cc/SNG8-XQJ9] [hereinafter CAUSA JUSTA].

⁴⁰ See INST. FOR CHILDREN, POVERTY, & HOMELESSNESS, *THE PROCESS OF POVERTY DESTABILIZATION: HOW GENTRIFICATION IS RESHAPING UPPER MANHATTAN AND THE BRONX AND INCREASING HOMELESSNESS IN NEW YORK CITY* (rev. ed. 2014), http://www.icphusa.org/wp-content/uploads/2016/09/ICPH_policybrief_TheProcessofPovertyDestabilization_Revised-022614.pdf [https://perma.cc/94E9-SRYG]; William R. Aronin, *Gentrification and the “New” New York*, 2016 ASPATORE SPECIAL REP. 5, 5; Amanda Briney, *Gentrification:*

The Controversial Topic of Gentrification and Its Impact on the Urban Core, THOUGHTCO. (Feb. 28, 2017), <https://www.thoughtco.com/gentrification-and-its-impact-on-urban-core-1435781> [https://perma.cc/VB4F-GFW7].

⁴¹ Badger, *supra* note 3.

try.⁴² An examination of how CLTs are being proposed and implemented, even in these cities where land is scarce and the housing market saturated,⁴³ shows the viability of this model in urban centers around the country.

A. *New York City*

In 2014, more than 56% of New York City renters spent more than one-third of their income on rent.⁴⁴ Nearly 30% spent more than half of their income on rent.⁴⁵ According to a recent study by the Furman Center, many of the neighborhoods that housed low-income communities in the 1990s have experienced such rapid rent increases that they are now unaffordable to low-income communities.⁴⁶ These gentrifying neighborhoods are not just based in Manhattan but also the “outer boroughs” of New York City, which were some of the most diverse neighborhoods in the world.⁴⁷ Although New York City still has more racial and economic diversity than many cities,⁴⁸ permanently affordable housing models must now swiftly be embraced in order to preserve that diversity.

1. NYCHA

New York City Housing Authority (“NYCHA”) is the agency that provides low-to-middle income New Yorkers across the five

⁴² See Abigail Sindzinski, *Why Homes in Major U.S. Cities Are Nearly Impossible to Afford*, CURBED (Jan. 27, 2016, 11:30 AM), <http://www.curbed.com/2016/1/27/10843266/buying-homes-major-cities-unaffordable-new-york-san-francisco-la> [https://perma.cc/76W4-69PC].

⁴³ *The Scarcity of Land: Land Suitable for Development is Limited, After All*, *supra* note 11.

⁴⁴ Press Release, N.Y.C. Dep’t of Hous. Pres. & Dev., HPD Releases Initial Findings of 2014 New York City Housing and Vacancy Survey (Feb. 24, 2015), <http://www1.nyc.gov/site/hpd/about/press-releases/2015/02/24.page> [https://perma.cc/AAG7-JMJD].

⁴⁵ ELYZABETH GAUMER & SHEREE WEST, N.Y.C. DEP’T OF HOUS. PRES. & DEV., SELECTED INITIAL FINDINGS OF THE 2014 NEW YORK CITY HOUSING AND VACANCY SURVEY 7 (2015), <http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf> [https://perma.cc/JU5W-4Q6D].

⁴⁶ See MAXWELL AUSTENSEN ET AL., NYU FURMAN CTR., STATE OF NEW YORK CITY’S HOUSING AND NEIGHBORHOODS IN 2015 5 (2016), http://furmancenter.org/files/sotc/NYUFurmanCenter_SOCin2015_9JUNE2016.pdf [https://perma.cc/BYG6-9P48].

⁴⁷ Svati Kirsten Narula, *The 5 U.S. Counties Where Racial Diversity Is Highest—and Lowest*, ATLANTIC (Apr. 29, 2014), <https://www.theatlantic.com/national/archive/2014/04/mapping-racial-diversity-by-county/361388/> [https://perma.cc/WSB2-7Q95] (naming Queens county as the third most diverse county in the United States).

⁴⁸ Richie Bernardo, *2016’s Most Diverse Cities in America*, WALLETHUB (May 11, 2016) <https://wallethub.com/edu/most-diverse-cities/12690/> [https://perma.cc/K7VX-SJNR].

boroughs with affordable housing.⁴⁹ Today, its operating budget is millions in debt and over 270,000 people remain on the waiting list.⁵⁰ In order for the agency to stay solvent, strategies are now being considered about how to generate additional funds, including partnerships with private developers.

Proposals for a NYCHA public-private partnership take different forms.⁵¹ In one iteration supported by the de Blasio mayoral administration, private developers would build market rate housing on underused portions of NYCHA campuses and give NYCHA a portion of the revenue.⁵² These funds would be used to renovate low-income housing and fill the deficit.⁵³ Sites have already been selected for the private developments that would be 50% affordable, and 50% market rate housing: Wyckoff Gardens in Brooklyn and Holmes Towers on the Upper East Side of Manhattan.⁵⁴ At Holmes, the new development would be built in the space where there is now a playground for resident children.⁵⁵

⁴⁹ *About NYCHA*, N.Y.C. HOUSING AUTHORITY, <http://www1.nyc.gov/site/nycha/about/about-nycha.page> [<https://perma.cc/J6Y4-3SBL>]. NYCHA also administers a Section 8 rent subsidy program. *About Section 8*, N.Y.C. HOUSING AUTHORITY, <http://www1.nyc.gov/site/nycha/section-8/about-section-8.page> [<https://perma.cc/R6PP-G3JP>].

⁵⁰ MARJORIE LANDA, N.Y.C. OFFICE OF THE COMPTROLLER, AUDIT REPORT ON THE NEW YORK CITY HOUSING AUTHORITY'S MANAGEMENT OF VACANT APARTMENTS 1, 3 (2015), http://comptroller.nyc.gov/wp-content/uploads/documents/MD15_060A.pdf [<https://perma.cc/VES8-2B52>] (noting that, as of the fall of 2014, 2,342 NYCHA apartments sat vacant while NYCHA maintained a waitlist of 273,391 households); *Preliminary Budget Hearing Before the Comm. on Pub. Hous.*, N.Y.C. Council 5-23 (Mar. 28, 2016) (testimony of Shola Olatoye, Chair and CEO of NYCHA), http://www1.nyc.gov/assets/nycha/downloads/pdf/budget_testimony_20160328.pdf [<https://perma.cc/T7FB-GLDR>]. In her budget testimony to the NY City Council, Olatoye declared that government disinvestment has resulted in a nearly \$2.5 billion loss in operating and capital funding since 2001, a deficit that will grow to a cumulative \$5 billion in 10 years. She goes on to state that the majority of NYCHA buildings are more than a half-century old and require \$17 billion in funding for major capital repairs.

⁵¹ *Partnerships*, N.Y.C. HOUSING AUTHORITY, <https://www1.nyc.gov/site/nycha/about/partnerships.page> [<https://perma.cc/Z7MG-7QKG>].

⁵² Nick Pinto, "It's A Land Grab": NYCHA Tenants Protest Private Development Plans for Public Land, *GOHAMIST* (Oct. 21, 2015, 12:15 PM), http://gothamist.com/2015/10/21/nycha_deblasio_protest.php [<https://perma.cc/YQ5S-8WQZ>].

⁵³ *Id.*

⁵⁴ Jackson Chen, *Wariness the Watchword Among NYCHA "Infill" Advisory Committee Members on UES*, *MANHATTAN EXPRESS* (June 30, 2016), <http://www.manhattanexpress-news.nyc/wariness-watchword-among-nycha-infill-advisory-committee-members-ues/> [<https://perma.cc/YW3E-DDDR>]; Abigail Savitch-Lew, *Intense NYCHA Engagement Effort Could Soften Infill Opposition*, *CITYLIMITS* (June 21, 2016), <http://citylimits.org/2016/06/21/intense-nycha-engagement-effort-could-soften-infill-opposition/> [<https://perma.cc/Z2QL-AJS9>].

⁵⁵ Chen, *supra* note 59.

Mayor de Blasio is currently receiving pushback for supporting this plan to build market rate housing on NYCHA campuses, a plan that was first proposed by the more conservative Bloomberg administration.⁵⁶ Many believe that the burden of solving budget deficits should not fall on underrepresented residents, and that New York City should instead reinvest in NYCHA so it could make the necessary capital repairs.⁵⁷ Low-income residents should not be burdened with overcrowding and other side effects of the construction.⁵⁸

2. Mitchell-Lama Housing

Unlike NYCHA, which is publically owned, Mitchell-Lama is a form of subsidized, privately-owned, affordable housing in New York City, whose mission is likewise being eroded due to privatization.⁵⁹ The New York City- and State-sponsored Mitchell-Lama program, first developed under the 1955 Limited Profit Housing Companies Act “for the purpose of building affordable housing for middle-income residents,”⁶⁰ was used by the federal government as a model for similar subsidized apartments.⁶¹ Over 105,000 apartments were built under the Mitchell-Lama program, including rental units and cooperatively owned apartments.⁶² However, the initial terms of affordability in many Mitchell-Lama houses have expired.⁶³ “After twenty years from initial occupancy, housing companies are statutorily permitted to voluntarily dissolve . . . and leave

⁵⁶ Pinto, *supra* note 52; *see also* Tom Angotti, *Stop NYCHA Infill Plan, Save Public Housing*, CITYLIMITS (May 9, 2013), <http://citylimits.org/2013/05/09/stop-nycha-infill-plan-save-public-housing/> [https://perma.cc/X7WS-ZK7A].

⁵⁷ Pinto, *supra* note 52.

⁵⁸ *Id.* (quoting N.Y.C. Councilmember Ben Kallos, who represents residents at one of the targeted properties, Holmes Tower). Kallos stated the following at a protest outside of Mayor de Blasio’s gala fundraiser in October of 2015: “We shouldn’t be building luxury housing on public land. Any development on public housing land needs to come with the approval of the existing tenants, and it needs to be 100 percent affordable.” *Id.*

⁵⁹ *See Mitchell-Lama*, N.Y.C. HOUSING PRESERVATION & DEV., <http://www1.nyc.gov/site/hpd/renters/mitchell-lama-rentals.page> [https://perma.cc/6T93-EETM]; *see also* Abigail Savitch-Lew, *Tough Fight to Keep Mitchell-Lamas from Going Private*, CITYLIMITS (May 10, 2016), <http://citylimits.org/2016/05/10/tough-fight-to-keep-mitchell-lamas-from-going-private/> [https://perma.cc/W72U-U733].

⁶⁰ *Mitchell-Lama Housing Program*, N.Y. HOMES & COMMUNITY RENEWAL, <http://www.nyshcr.org/Programs/mitchell-lama/> [https://perma.cc/G3E8-UEUT] (last updated Apr. 1, 2015); Private Housing Finance Law, N.Y. PRIV. HOUS. FIN. LAW ch. 44B, art. II (2017).

⁶¹ *Mitchell-Lama Housing Program*, *supra* note 60.

⁶² *Id.*; *Mitchell-Lama*, *supra* note 59.

⁶³ *Mitchell-Lama Housing Program*, *supra* note 60.

the program. To date, 93 Mitchell-Lama rental developments (approximately 31,700 apartments) have voluntarily dissolved.⁶⁴ The developer is statutorily permitted to raise the rents once the mortgage, interest, as well as tax abatements received from the government are returned.⁶⁵

The first buyout took place in September 1984 when a developer raised the rent of his tenants by about 40% in a building that was largely inhabited by senior citizens.⁶⁶ These residents were given the choice to move or pay higher rents.⁶⁷ The state brought suit on behalf of the senior residents, but the court found that it did not have jurisdiction to reverse the buyout.⁶⁸ Most Mitchell-Lama rentals are at this point rent-regulated,⁶⁹ but some Mitchell-Lama coops have also been converting to market rate homes.⁷⁰

Some of the neighborhoods where Mitchell-Lama buildings were built have seen a dramatic increase in real estate prices, making buyout an even more viable and attractive prospect.⁷¹ When a Mitchell-Lama coop goes private, those who own apartments can sell them at market rates.⁷² This happened at the Mitchell-Lama

⁶⁴ *Id.*; N.Y. PRIV. HOUS. FIN. LAW § 35 (McKinney 2017).

⁶⁵ N.Y. PRIV. HOUS. FIN. LAW § 35(2); N.Y. COMP. CODES R. & REGS. tit. 9, § 1725-1.1 (2017).

⁶⁶ *History*, MITCHELL-LAMA RESIDENTS COALITION, <http://www.mitchell-lama.org/history.html> [<https://perma.cc/7AA8-KGV8>].

⁶⁷ *Id.*

⁶⁸ *Id.* See also David J. Sweet & John D. Hack, *Mitchell-Lama Buyouts: Policy Issues and Alternatives*, 17 FORDHAM URBAN L.J. 117, 153 (1989); Philip S. Gutis, *Unfettering Mitchell-Lama*, N.Y. TIMES (Feb. 23, 1986), <http://www.nytimes.com/1986/02/23/realestate/unfettering-mitchell-lama.html> [<https://perma.cc/9TWR-HX4U>].

⁶⁹ See *Mitchell-Lama Housing Program*, *supra* note 65 (explaining that, in areas subject to the Rent Stabilization Law or the Emergency Tenant Protection Act, developments that “buy out” are covered by rent stabilization). The term “rent-regulated housing” refers to both “rent-controlled” and “rent-stabilized” apartments. *Rent-Regulated & Market-Rate Housing: What Is It & Where Can You Find It?*, N.Y.C. RENT GUIDELINES BOARD, <http://www.nycrgb.org/html/resources/stabilized.html> [<https://perma.cc/59BD-AEMG>] [hereinafter *Rent-Regulated & Market-Rate Housing*]. If a rent-stabilized apartment is vacated, it can become market rate for the new tenant. *Id.* The distinctions between rent regulated and rent controlled apartments do not exist in other jurisdictions including the Bay Area. See discussion *infra* Section III.

⁷⁰ Abigail Savitch-Lew, *The Seven Worries of New York City's Mitchell-Lama Tenants*, CITYLIMITS (Mar. 2, 2016), <http://citylimits.org/2016/03/02/the-seven-worries-of-new-york-citys-mitchell-lama-tenants/> [<https://perma.cc/3QER-HAYJ>] (“[A]bout half of the state’s rental Mitchell-Lamas have left the program . . . [but] only 7 percent of cooperatives have left the program. Yet privatization can be tempting to shareholders: [since it] . . . allows shareholders to sell their apartments at market rates.”).

⁷¹ Raanan Geberer, *Mitchell-Lama Co-ops: The Pressure to Privatize*, N.Y. COOPERATOR (Oct. 2015), <https://cooperator.com/article/mitchell-lama-co-ops> [<https://perma.cc/UA78-TLFT>].

⁷² Raanan Geberer, *The Mitchell-Lama Buyout Process: The Challenges of Going Private*,

Southbridge project, which overlooks the East River of Manhattan. After a contentious eight-year debate, shareholders voted to leave Mitchell-Lama, paving the way for residents to sell their apartments without resale caps.⁷³

3. Mandatory Inclusionary Housing

With long waiting lists for NYCHA housing, the affordability of Mitchell-Lama expiring or being outvoted, and rapid rates of displacement of low-income families from once-affordable neighborhoods, the current City administration has made a housing plan that aims to build or preserve 200,000 units of affordable housing.⁷⁴ Part of the construction plan focuses on Mandatory Inclusionary Housing (“MIH”), which requires private developers to include affordable housing in their construction plans in exchange for strategic zoning changes.⁷⁵ The complications of MIH housing show the limitations of relying on private developers to agree to the construction of affordable units.

On March 22, 2016, the New York City Council adopted an amended version of MIH.⁷⁶ Even with the policy in place, many private developers claim that, without the lapsed New York State subsidy (“Section 421-a”),⁷⁷ MIH will be unsuccessful.⁷⁸ In the

N.Y. COOPERATOR (July 2015), <http://cooperator.com/article/the-mitchell-lama-buyout-process> [https://perma.cc/4QXP-NA46].

⁷³ Ronda Kaysen, *Divided by a Windfall: Affordable Housing in New York City Sparks Debate*, N.Y. TIMES (Nov. 14, 2014), <http://www.nytimes.com/2014/11/16/realestate/affordable-housing-in-new-york-city-sparks-debate.html> [https://perma.cc/9PL4-NVKE].

⁷⁴ CITY OF N.Y., HOUSING NEW YORK, A FIVE-BOROUGH TEN-YEAR PLAN 6 (2014), http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf [https://perma.cc/2K5R-XWEZ]. Over the past 20 years, wages have increased by less than 15% whereas monthly rents in New York City have increased by almost 40%. *Id.* at 5. Also, “[f]or the first time in decades, more people are moving or staying in [New York] City than leaving.” *Id.* Older residents are not moving away from the city as they used to, and neither are young families moving to the suburbs. *Id.* At the same time, unprecedented numbers are moving from all over the country and world. *Id.* In this climate, there is not enough housing, let alone affordable housing for current residents. *Id.*

⁷⁵ Abigail Savitch-Lew, *Everything You Need to Know About Mandatory Inclusionary Housing but Were Afraid to Ask*, CITYLIMITS (Nov. 17, 2016), <http://citylimits.org/2016/11/17/everything-you-need-to-know-about-mandatory-inclusionary-housing-but-were-afraid-to-ask> [https://perma.cc/DQV2-S2NR].

⁷⁶ *Mandatory Inclusionary Housing*, N.Y.C. DEP’T CITY PLAN. (Mar. 22, 2016), <http://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page> [https://perma.cc/P8V2-9HPB].

⁷⁷ N.Y. REAL PROP. TAX LAW § 421-a (McKinney 2015); Kathryn Brenzel, *Can New Affordable Housing Programs Fill the 421a Void?*, REAL DEAL (Mar. 18, 2016, 8:00 AM), <http://therealdeal.com/2016/03/18/can-new-affordable-housing-programs-fill-the-421a-void> [https://perma.cc/9JV3-SEA7].

meantime, private developers hesitate to develop these mixed-income apartment buildings unless adequate subsidies are available.⁷⁹

Private developers are not the only ones with qualms about Mandatory Inclusionary Housing; some low-income residents also have objections, claiming that the newly created “affordable” units would still be outside their income brackets.⁸⁰ According to a New York Times article, most of the 200,000 “affordable housing” units proposed by the Mayor would be unaffordable to half the city’s population.⁸¹ With both private developers as well as low-income communities dissatisfied with this policy, advocacy groups and other branches of city government are looking into alternatives that would create permanently and truly affordable housing.

4. An Alternative Strategy: Converting Vacant Land to Permanently Affordable Housing

A growing number of organizations around New York City have initiated studies to track vacant property, and to transfer that land into public or nonprofit hands that would redevelop the land for permanently affordable housing.⁸² This would eliminate the

⁷⁸ Duscia Sue Malesevic, *Developers Say de Blasio Affordable Housing Plan Is “Almost Meaningless” Without 421a*, REAL DEAL (Mar. 22, 2016, 9:36 AM), <http://therealdeal.com/2016/03/22/developers-say-de-blasio-affordable-housing-plan-is-almost-meaningless-without-421a> [<https://perma.cc/559B-MH6C>]. Re-passage of Section 421-a is on hold until the real estate sector and construction unions can come to an agreement about the wages that workers would receive at construction sites. See Steven Wishnia, *With 421-a Construction Subsidy Expired, What’s Next?*, LABORPRESS (Feb. 3, 2016), <http://laborpress.org/sectors/building-trades/6749-with-421-a-construction-subsidy-expired-what-s-next> [<https://perma.cc/BTL9-YET2>]. On August 17, 2016, New York State Governor Andrew Cuomo proposed to developers a resolution: they would not have to hire union workers, but they would have to pay a competitive base hourly salary and benefits that would be subsidized by the state in exchange for setting aside a portion of developed housing for below market rentals. Konrad Putzier, *Cuomo Offers Wage Subsidy to Save 421a*, REAL DEAL (Aug. 18, 2016, 8:42 AM), <http://therealdeal.com/2016/08/18/cuomo-offers-wage-subsidy-to-save-421a> [<https://perma.cc/78YU-Z6RN>].

⁷⁹ Malesevic, *supra* note 78.

⁸⁰ Miranda Katz, *De Blasio’s Affordable Housing Plan Faces Angry Resistance in Northern Manhattan*, GOTHAMIST (Mar. 17, 2016, 2:20 PM), http://gothamist.com/2016/03/17/inwood_residents_implore_council_to.php [<https://perma.cc/434H-7R6S>].

⁸¹ Michael Kimmelman, *In Gowanus, A People’s Housing Plan to Challenge the Mayor’s*, N.Y. TIMES (Aug. 1, 2016), <http://www.nytimes.com/2016/08/02/arts/design/in-gowanus-a-peoples-housing-plan-to-challenge-the-mayors.html> [<https://perma.cc/Q5U4-3S7H>].

⁸² Picture the Homeless, The New Economy Project, and 596 Acres, to name a few, have all released studies on this topic. See, e.g., PICTURE THE HOMELESS, HOMELESS PEOPLE COUNT: VACANT PROPERTIES IN MANHATTAN (2015), http://picturethehomeless.org/wp-content/uploads/2015/12/Homeless_People_Count2.pdf [<https://perma.cc/78YU-Z6RN>].

problem of expiring terms of affordability and of getting private developers to agree to the creation of these units.

City Comptroller Scott Stringer introduced a proposal for a New York City Land Bank in February of 2016.⁸³ Land banks are “nonprofit corporations designed to convert tax-delinquent and vacant properties into affordable housing or other productive uses.”⁸⁴ Land banks, already in various cities including in the Midwest⁸⁵ and throughout New York State,⁸⁶ have proven successful at redeveloping available land for public use.⁸⁷

Comptroller Stringer starts out his proposal for a New York City Land Bank by explaining the gravity of the city’s affordable housing crisis: since 2000, the City has lost over 400,000 apartments renting for \$1,000 a month or less, with the harshest consequences being felt by working New Yorkers earning less than \$40,000 a year.⁸⁸ He stated that these pressures have contributed to a surging homeless population, with more than 58,000 people living in the City’s shelter system, including more than 23,000 children.⁸⁹ A recent audit of the City’s Department of Housing Preservation and Development (“HPD”), indicated that there are currently 1,459 vacant properties owned by the City that sit unused and undeveloped.⁹⁰ The Comptroller’s Office has also identified 247 persistently tax delinquent properties that could be readily converted into affordable housing.⁹¹

ma.cc/E2B3-2CRQ]; *Publications*, NEW ECONOMY PROJECT, <http://www.neweconomy-nyc.org/type/publications> [<https://perma.cc/WK4V-ZQ5X>] (providing reports on the topic); *We Made These Online Advocacy Tools*, 596 ACRES, <http://596acres.org> [<https://perma.cc/MJ4S-TKKN>].

⁸³ See BUILDING AN AFFORDABLE FUTURE, *supra* note 12.

⁸⁴ *Id.* at 4.

⁸⁵ See URBAN LAND INST. CHI., COOK COUNTY LAND BANK TAP 2 (2012), <http://chicago.uli.org/wp-content/uploads/sites/16/2012/03/121171-ULI-CC-Land-Bank-TAP.pdf> [<https://perma.cc/Y5S5-8PKP>].

⁸⁶ *New York State Land Bank Program*, EMPIRE STATE DEV., <https://esd.ny.gov/businessprograms/nyslbp.html> [<https://perma.cc/37NL-G6P5>].

⁸⁷ *Benefits of a Landbank*, LAND BANK: BUFFALO ERIE NIAGRA LAND IMPROVEMENT CORP., <http://www.benlic.org/benefits-of-a-land-bank> [<https://perma.cc/NAM5-NWVF>] (listing some of the benefits attributable to a land bank).

⁸⁸ BUILDING AN AFFORDABLE FUTURE, *supra* note 12, at 4.

⁸⁹ *Id.*

⁹⁰ *Id.* at 4-5.

⁹¹ *Id.* at 4. The exact number of abandoned properties cited in the report has been contested. Some housing groups claim that a number of the thousand-plus vacant properties are in flood zones or had other issues that would make development a challenge. They also pointed to an additional 150 properties that were better suited for projects other than residential buildings, such as parks and police stations. Mireya Navarro, *Audit Faults New York City for Not Using Vacant Lots for Affordable Housing*, N.Y. TIMES (Feb. 17, 2016), <https://www.nytimes.com/2016/02/18/nyregion/audit-pro>

New York City's traditional model for developing affordable housing, selling the property to a private developer in exchange for setting aside a percentage of affordable units for a limited duration, is critiqued in Stringer's report. Within this model, the City loses leverage by transferring title and cannot mandate that the land be kept affordable in perpetuity. With a land bank, the City could maintain title to the land and dedicate its use to affordable housing. Comptroller Stringer's office proposed to "[s]eed the land bank by transferring vacant, city-owned properties and/or re-directing a portion of outstanding tax liens to the land bank"⁹² The Comptroller's study stated that a land bank could have stepped in during the 2008 housing bubble and credit crisis in order to purchase some of the foreclosed properties.⁹³

The foundations for a land bank in New York City have already been set. New York State authorized the creation of municipal land banks with the passage of the New York Land Bank Act in 2011, signed into law by Governor Andrew Cuomo.⁹⁴ In 2013, New York State Attorney General Schneiderman announced a \$20 million grant to help communities still recovering from the foreclosure crisis, including more than \$12.4 million designated for local land banks.⁹⁵ Although there are land banks in Upstate New York in areas including Syracuse, Albany, and Broome County,⁹⁶ there is

poses-using-vacant-lots-owned-by-new-york-city-for-affordable-housing.html [https://perma.cc/GM8V-N8XU]. Public officials such as the Commissioner of Housing, Preservation and Development, Vicki Been, objected to the assertion that HPD allows vacant city-owned properties to languish in the face of an affordable housing crisis. She and other officials maintain that if the city maintains title to vacant land, it is for good reason, like its inhabitability, or that development plans are already underway. Tanay Warerkar, *Thousands of Vacant City-Owned Lots Could Become Affordable Housing: Report*, CURBED N.Y. (Feb. 18, 2016, 12:20 PM), <http://ny.curbed.com/2016/2/18/11080200/thousands-of-vacant-city-owned-lots-could-become-affordable-housing> [https://perma.cc/ADQ6-TBG8].

⁹² BUILDING AN AFFORDABLE FUTURE, *supra* note 12, at 5.

⁹³ *Id.* at 26.

⁹⁴ *New York State Land Bank Program*, *supra* note 86. New York State permits twenty land banks statewide. *Id.*

⁹⁵ Press Release, Att'y Gen. Eric T. Schneiderman, A.G. Schneiderman Announces First Round of Awards for \$20 Million Program to Rebuild and Reinvest in Communities Recovering from the Housing Crisis (Oct. 29, 2013), <https://ag.ny.gov/press-release/ag-schneiderman-announces-first-round-awards-20-million-program-rebuild-and-reinvest> [https://perma.cc/P4DN-YEDX].

⁹⁶ CENTERSTATE CEO, NEW YORK STATE LAND BANKS: COMBATING BLIGHT AND VACANCY IN NEW YORK COMMUNITIES 7 (2014), http://broomelandbank.org/resources/2014_NYS_Land_Banks_Web.pdf [https://perma.cc/MY5J-V9P9]; *see, e.g., Restoring Properties, Revitalizing Neighborhoods*, GREATER SYRACUSE LAND BANK, <http://syracuse-landbank.org> [https://perma.cc/G4W4-AKHX]; ALBANY COUNTY LAND BANK CORP., <http://albanycountylandbank.org> [https://perma.cc/N6JL-FAEB].

not yet one in New York City.

The land bank that City Comptroller Stringer proposed in his report would transfer the land it acquires to a CLT, in order to designate the land for affordable housing.⁹⁷ The concept of CLTs in New York is growing in popularity. In addition to the Comptroller including CLTs in his proposal, City Council Speaker Melissa Mark-Viverito made CLTs part of New York City's District Eight rezoning plan.⁹⁸ Mark-Viverito supports the establishment of the East Harlem/El Barrio CLT, which plans to own land to lease for affordable housing, as well as develop a resident-controlled mutual housing association to help manage those properties.⁹⁹

At least two buildings in East Harlem have been identified that would be transferred to the CLT.¹⁰⁰ These properties were created as limited equity coops,¹⁰¹ under a program "launched in 1978, [that] provided the tenants of buildings abandoned by their landlords an opportunity to form cooperatives and buy their buildings from the city for \$250 a unit."¹⁰²

⁹⁷ BUILDING AN AFFORDABLE FUTURE, *supra* note 12, at 13-15.

⁹⁸ OFFICE OF CITY COUNCIL SPEAKER MELISSA MARK-VIVERITO ET AL., EAST HARLEM NEIGHBORHOOD PLAN 68-69 (2016), http://www.eastharlempian.nyc/EHNP_FINAL_REPORT.pdf [<https://perma.cc/4X4Z-AD52>]. After Speaker Mark-Viverito's report, a similar plan was adopted in Gowanus, Brooklyn that gives residents a voice in the rezoning plan for the neighborhood. Kimmelman, *supra* note 86.

⁹⁹ Telephone Interview with Marie Winfield, President, East Harlem/El Barrio Cmty. Land Tr. (July 20, 2016).

¹⁰⁰ Abigail Savitch-Lew, *City Slow to Embrace Land Trusts as Housing Tool*, CITYLIMITS (May 9, 2016), <http://citylimits.org/2016/05/09/city-slow-to-embrace-land-trusts-as-housing-tool/> [<https://perma.cc/7AE2-V8HF>].

¹⁰¹ 154 buildings remain in the Tenant Interim Lease (TIL) program, now revamped as the Affordable Neighborhood Cooperative Program. *Id.* This program created Limited Equity Cooperatives (LECs) in New York City which have been criticized for their lack of caps on resale prices, with their terms restricting price resale typically only lasting 10-40 years. Michelle Higgins, *Bargains With a 'But': Affordable New York Apartments With a Catch*, N.Y. TIMES (June 27, 2014), <https://www.nytimes.com/2014/06/29/realestate/affordable-new-york-apartments-with-a-catch.html> [<https://perma.cc/K88R-QMRX>]. This means that although the apartments were created as affordable units, they can be converted into market rate units as a result of lack of permanent restrictions. *Id.* The City Council recently proposed a mandated resale cap allowing for appreciation of value due to improvements but not a large profit. The resale caps would be imposed in exchange for forgiveness of property taxes that many LECs currently owe. Josh Barbanel, *New York City Council Proposes Ending Property Taxes for Low-Income Co-ops*, WALL ST. J. (Nov. 29, 2015, 9:16 PM), <http://www.wsj.com/articles/new-york-city-council-proposes-ending-property-taxes-for-low-income-co-ops-1448846154> [<https://perma.cc/M2EH-LATW>]. The Urban Homesteading Assistance Board stated before the New York City Council that the cost of forgiving all NYC-based LECs' tax arrears in a full tax abatement program would be much less than the cost to create new affordable units. *Id.*

¹⁰² Savitch-Lew, *supra* note 100.

Now, residents of these properties would like to transfer ownership of the land to the East Harlem CLT and the multi-building mutual housing association.¹⁰³ East Harlem tenants believe that a CLT and mutual housing association would provide more effective oversight and management of the property than the management they are receiving from the City.¹⁰⁴ There are also aging residents living in the properties that have become mobility-impaired, but are still living on the top floors of their walk-up apartments.¹⁰⁵ Residents believe that with the CLT model, they could serve on the CLT board, or be a part of the mutual housing association that will manage the properties, paving the way to greater accountability to use resources in a way that meets residents' actual needs.¹⁰⁶ The CLT has been in negotiation with the city for years now about finalizing the transfer.¹⁰⁷

Transferring limited equity cooperatives that were created in the 1970s and 1980s to a CLT is a strategy that is also being considered in other neighborhoods around New York City, including Bushwick, Brooklyn. Ridgewood Bushwick Senior Citizen Council ("RBSCC"), which works on housing preservation, rehabilitation, and development of affordable housing within areas of Brooklyn and Queens, is teaming up with Urban Homestead Assistance Board ("UHAB") to create a Community Land Trust that would oversee a group of 17 limited equity cooperatives all located within a two-block radius of each other.¹⁰⁸ The transfer of ownership of these 17 buildings, and possibly other affordable housing units in the future,¹⁰⁹ would be managed by a Community Land Trust to

¹⁰³ *Id.* David West states that, as CLTs are being created all around the country, they are most often established in coordination with municipal housing agencies with the CLT owning the land, and the MHA managing and sometimes owning the properties themselves. David West, *Valuation of Community Land Trust Homes in New York State*, 8 J. PROP. TAX ASSESSMENT & ADMIN., no. 4, 2011, at 15.

¹⁰⁴ Savitch-Lew, *supra* note 100.

¹⁰⁵ Telephone Interview with Marie Winfield, President, East Harlem/El Barrio Cmty. Land Tr. (July 20, 2016).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Telephone Interview with Scott Short, Assistant Exec. Dir. of Bus. Dev. & Real Estate, Ridgewood Bushwick Senior Citizens Council, Inc. (July 7, 2016).

¹⁰⁹ *Id.* The development process of the CLT began in 2006. *Id.* Negotiations with the New York Attorney General's office began in 2010 to transfer the coops to the hands of the emerging CLT. *Id.* UHAB is in charge of drafting the offering plan – the document that outlines the transfer of the 17 TIL properties to the CLT, and the establishment of the CLT jointly. *Id.* Once the offering plan is approved, RBSCC is prepared to start to form the CLT board that will be comprised of UHAB members, RBSCC staff, tenants of the buildings, and community members. *Id.*

ensure the affordability of these units in perpetuity.¹¹⁰

Besides the CLTs that are now emerging in New York City in response to the affordability crisis, there is one successful CLT in existence from decades ago: the Cooper Square Committee.¹¹¹ This CLT was established to oppose a city redevelopment plan that would have displaced local residents while demolishing blighted properties and rebuilding for more affluent communities.¹¹² The Committee developed an alternative plan that preserved housing for residents while still allowing for new units. The alternative plan was approved in the 1960s, paving the way for equitable redevelopment.¹¹³ To this day, the Committee oversees affordable housing in the area that has been rapidly gentrified.¹¹⁴

Other coalitions have also emerged to promote CLTs. New York City Community Land Initiative (“NYCCLI”), an alliance of academics, affordable-housing developers, and community activists, educate the public about Community Land Trusts and advocate for their inclusion in city policy.¹¹⁵ NYCCLI member organizations including Picture the Homeless, 596 Acres, and the New Economy Project have all been active in the advocacy work.¹¹⁶

The creation of CLTs in New York City is essential to ensure permanently affordable housing that can help preserve the diversity of the City. The Comptroller’s proposal for a land bank administered by a CLT, as well as City Council and community groups’ support for CLTs to address the affordable housing crisis, must be embraced as an integral part of the Mayor’s Housing Plan. Private partnerships and city-sponsored deals to work with private developers have brought more complications than actual benefits to residents of this city, and permanently affordable alternatives should be recognized as the preferable approach.

¹¹⁰ *Id.*

¹¹¹ Mironova, *supra* note 13.

¹¹² Daniel Weinberg, *Our Historical Accomplishments*, COOPER SQUARE COMMITTEE (June 3, 2009), <http://coopersquare.org/about-us/our-historical-accomplishments> [<https://perma.cc/UL78-MQEP>].

¹¹³ *Id.*

¹¹⁴ See Jamiles Lartey, ‘Cooper Square Is Here to Stay,’ But First They Had to Go on the Warpath, BEDFORD + BOWERY (Jan. 1, 2015), <http://bedfordandbowery.com/2015/01/cooper-square-is-here-to-stay-but-first-they-had-to-go-on-the-warpath/> [<https://perma.cc/U74M-8ENP>].

¹¹⁵ *Mission, Core Values and Strategies*, N.Y.C. COMMUNITY LAND INITIATIVE, <https://nyccli.org/about/mission-and-strategies/> [<https://perma.cc/DLL2-KNKP>].

¹¹⁶ *Members and Endorsers*, N.Y.C. COMMUNITY LAND INITIATIVE, <https://nyccli.org/about/members-and-endorsers/> [<https://perma.cc/W4VD-YQ79>].

B. *The Bay Area of California*

San Francisco has the most pronounced housing shortage in the nation¹¹⁷ with rents that are higher than any other U.S. city.¹¹⁸ The situation has worsened since the current tech boom in San Francisco and the Silicon Valley, as newcomers earning higher incomes push up the rental and housing prices area-wide.¹¹⁹ Local residents have experienced “no-fault” evictions or are priced out of their homes, and in turn have relocated to surrounding cities,¹²⁰ either displacing the low-to-middle income communities there¹²¹ or ending up homeless.¹²²

Given the seriousness of the housing crisis, local advocates are trying to address the pressing need for housing in a number of ways, including the formation of CLTs. There are now several CLTs in the Bay Area: the San Francisco CLT (“SFCLT”), Oakland CLT (“OakCLT”), the Bay Area CLT in Berkeley (“BACLt”), Northern California Land Trust (“NCLT”), and others, who are part of a consortium of Bay Area CLTs.¹²³ There is also a California statewide coalition of CLTs.¹²⁴ The concentration of CLTs in the Bay Area is unique, and holds potential for coordinated change utilizing this land-preservation method.

The SFCLT was incorporated in 2003 by a group of San Francisco residents involved in tenant anti-displacement and affordable

¹¹⁷ Erin Carlyle, *San Francisco Tops Forbes' 2015 List of Worst Cities for Renters*, FORBES (Apr. 16, 2015, 9:11 AM), <http://www.forbes.com/sites/erincarlyle/2015/04/16/san-francisco-tops-forbes-2015-list-of-worst-cities-for-renters/#d17697e56e77> [https://perma.cc/K5BU-RY7X].

¹¹⁸ Kate Abbey-Lambertz, *There's a Profoundly Simple Explanation for San Francisco's Housing Crisis*, HUFFINGTON POST (June 2, 2016, 7:48 PM), http://www.huffingtonpost.com/entry/san-francisco-housing-crisis_us_5750a95ee4b0eb20fa0d682e [https://perma.cc/82NP-WBJC].

¹¹⁹ *Id.*

¹²⁰ See generally ANTI-EVICTION MAPPING PROJECT, <http://www.anti-evictionmap.com> [https://perma.cc/7RWA-89SN] (documenting the dispossession and resistance of San Francisco Bay area residents).

¹²¹ J.K. Dineen, *S.F. Workers Lured Eastward as Home Prices Head Upward*, S.F. CHRON. (Jan. 16, 2016), <http://www.sfchronicle.com/bayarea/article/S-F-workers-lured-eastward-as-home-prices-head-6764475.php> [https://perma.cc/LM7U-GHA6].

¹²² Caleb Pershan, *71% of SF Homeless Once Had Homes In SF*, SFIST (Feb. 11, 2016, 11:00 AM), http://sfist.com/2016/02/11/71_of_sf_homeless_once_had_homes_in.php [https://perma.cc/8W72-3AQT] (stating that 71% of the 7,000 homeless individuals in San Francisco once had homes in the city).

¹²³ BAY AREA CONSORTIUM COMMUNITY LAND TR., <http://www.bacclt.org> [https://perma.cc/X3CE-4MTB].

¹²⁴ *California CLT Network*, BAY AREA CONSORTIUM COMMUNITY LAND TR., <http://www.bacclt.org/cacltnetwork/> [https://perma.cc/DJ9X-RZE2].

housing activism.¹²⁵ Initially, the SFCLT focused on legislative reform aimed to “allow tenants in buildings to buy their apartments as limited equity condominiums with permanent resale restrictions”¹²⁶ The SFCLT conducts educational outreach to residents so that they are aware of income restrictions and household limitations of affordable housing, to help prevent evictions and being priced out of their apartments. Rent has skyrocketed under the guise of major capital improvements, and many families have been threatened with eviction because of sudden enforcement of household occupancy limits, or landlord move-ins.¹²⁷

The SFCLT is currently concentrating on maintaining rent-stabilized housing in San Francisco.¹²⁸ Private developers are eliminating the pool of rent-stabilized housing in San Francisco through the Ellis Act,¹²⁹ a state law holding that landlords have the right to evict all tenants, removing the building from the rental market in order to convert the rental units into condominiums or single family homes.¹³⁰ At least 10,000 San Francisco residents have already been displaced because of the Ellis Act.¹³¹ Most Ellis evictions are

¹²⁵ *About Us*, S.F. COMMUNITY LAND TR., <http://sfclt.org/about.php> [<https://perma.cc/AU7L-VVLF>] [hereinafter SFCLT].

¹²⁶ *Id.*

¹²⁷ “Subject to certain restrictions, outlined below, a landlord can evict a tenant if the landlord is going to move into the unit to live, or (only if the landlord is also going to be living in the building) for a close relative to move in and live there. These evictions are highly abused and landlords who want to evict a tenant in order to raise the rent on a new tenant typically use owner move-in evictions (OMIs/landlord move-in evictions/LMIs) that are only allowed if done properly.” *Owner or Relative Move-In Evictions*, S.F. TENANTS UNION, <https://www.sftu.org/omi/> [<https://perma.cc/A3TU-9S5Q>].

¹²⁸ Telephone Interview with Tracy Parent, Former Org. Dir., S.F. Cmty. Land Tr. (May 23, 2016). New York City, by comparison, has separate categories of rent controlled and stabilized apartments, while the only category of rent regulated apartments in the Bay Area is “rent stabilized.” *Rent-Regulated & Market-Rate Housing*, *supra* note 74.

¹²⁹ *Ellis Act Evictions*, S.F. TENANTS UNION, <https://www.sftu.org/ellis/> [<https://perma.cc/QM2X-5ZF5>] (“The Ellis Act is included in the just causes for eviction under the Rent Ordinance as Section 37.9(a)(13).” (citation omitted)); S.F., CAL., ADMIN. CODE § 37.9.

¹³⁰ *Ellis Act Evictions*, *supra* note 129. Once a landlord decides that he will convert his rental units into condos through the Ellis Act, he must file a Notice of Intent to Withdraw Rental Units From Rental Market with The San Francisco Rent Board, tell tenants that they have rights to relocation assistance, and tell elderly or disabled tenants that some of them have the right to extend their leases. *Topic No. 205: Evictions Pursuant to the Ellis Act*, S.F. RENT BOARD, <http://sfrb.org/TOPIc-no-205-evictions-pursuant-ellis-act> [<https://perma.cc/X2D2-JZ94>].

¹³¹ DEAN PRESTON, TENANTS TOGETHER & THE ANTI-EVICTION MAPPING PROJECT, THE SPECULATOR LOOPHOLE: ELLIS ACT EVICTIONS IN SAN FRANCISCO 2 (2014), <http://www.tenants-together.org/sites/tenants-together.org/files/Ellis%20Act%20Report%20FINAL.pdf> [<https://perma.cc/A7ZN-K3SP>] [hereinafter TENANTS TOGETHER].

used to convert rental units to for-sale units, using loopholes in the condominium law.¹³² A common trend is for real estate speculators to buy an existing rent stabilized building at a discounted price due to its rent restrictions, fully occupied, and then invoke the Ellis Act in order to convert the rent-regulated units to higher-priced, for-sale units.¹³³

The SFCLT was able to help advocate for a source of city funding, earmarked as an anti-displacement or small-sites acquisition fund, to combat this trend.¹³⁴ The CLT uses the fund to purchase rent-stabilized buildings that might otherwise be converted to market rate units or short-term rentals (e.g., Airbnb), to preserve the housing units as permanently affordable.¹³⁵ Since the creation of this fund in 2014, the SFCLT has been able to acquire an additional nine properties.¹³⁶ The SFCLT now has within its housing portfolio 12 properties containing 102 housing units.¹³⁷

The SFCLT also works in partnership with various Community Development Corporations (“CDCs”) that oversee affordable housing in working class communities of color at risk of displacement, such as Chinatown Community Development Center and the Mission Economic Development Agency.¹³⁸ The CLT assists the CDC to work with residents at risk of eviction, educating them about their rights and housing alternatives.

East of the San Francisco Bay, the OakCLT is tackling its own set of challenges. The OakCLT started in response to the more than 13,000 foreclosures that occurred in Oakland between 2007 and 2013.¹³⁹ Through the organizing efforts of the Oakland chap-

¹³² *Ellis Act Evictions*, *supra* note 129.

¹³³ Telephone Interview with Tracy Parent, *supra* note 128. E-mail from Tracy Parent, Org. Dir., S.F. Cmty. Land Tr., to Julie Gilgoff (May 3, 2017, 10:16 AM) (on file with author).

¹³⁴ *Id.*

¹³⁵ News Release, Office of the Mayor, City & Cty. of S.F., Mayor Lee Announces Funding for Small Site Acquisition Program to Protect Longtime San Francisco Tenants (Aug. 11, 2014), <http://www.sfmayor.org/index.aspx?recordid=653&page=846> [<https://perma.cc/8K3G-VKWM>].

¹³⁶ Telephone Interview with Tracy Parent, *supra* note 128.

¹³⁷ E-mail from Tracy Parent, Org. Dir., S.F. Cmty. Land Tr., to Julie Gilgoff (July 8, 2016, 2:48 PM) (on file with author).

¹³⁸ *Community Partners*, S.F. COMMUNITY LAND TR., http://sfclt.org/Community_Partners [<https://perma.cc/E93M-UPGR>]; *Resident Services*, CHINATOWN COMMUNITY DEV. CTR., <http://www.chinatowncdc.org/building-community/resident-services> [<https://perma.cc/K2UY-7HFW>]; *Community Real Estate*, MISSION ECON. DEV. AGENCY, <http://medasf.org/programs/community-real-estate/> [<https://perma.cc/D2C9-95ZJ>].

¹³⁹ Telephone Interview with Steve King, Exec. Dir., Oakland Cmty. Land Tr. (June 7, 2016).

ter of the Association of Community Organizations for Reform Now (“ACORN”) and the Urban Strategies Council, the OakCLT incorporated as a 501(c)(3) tax-exempt corporation in January 2009 to help low-income communities devastated by the collapse of the housing market.¹⁴⁰ On April 21, 2009, the Oakland City Council approved a resolution authorizing an allocation of Federal Neighborhood Stabilization Program funds to the OakCLT.¹⁴¹ The OakCLT used these funds to bid on and acquire vacant foreclosed properties to rehabilitate for sale or rental to low-to-middle income families.¹⁴² The CLT served its purpose in helping the City of Oakland weather the foreclosure crisis, and is now playing its part to combat the affordability crisis.¹⁴³

Although the OakCLT still has a stock of single-family homes in its portfolio, it is looking to acquire apartment buildings that could more adequately address the widespread need for affordable units in Oakland. The organization has also broadened its scope to include land for purposes other than housing.¹⁴⁴ The OakCLT is currently looking into the acquisition of thirteen vacant lots, nine of which would be used for community gardens and urban agriculture.¹⁴⁵ It plans to take advantage of the California state code, allowing nonprofits to intervene on default properties after five years of delinquency and before a private developer is given the opportunity to bid, while working on this urban agriculture project.¹⁴⁶ In addition, the OakCLT wishes to take on the issue of displacement of nonprofit organizations, acquiring land to keep it permanently affordable for businesses that benefit the community.¹⁴⁷

The OakCLT relies on a variety of sources of private financing, but those funds need to be supplemented by public subsidies. The CLT was hit hard by the 2012 state closure of the California State Redevelopment Agency, which had played a substantial role in funding the development of affordable housing throughout Cali-

¹⁴⁰ *Id.*

¹⁴¹ *OakCLT Timeline*, OAKLAND COMMUNITY LAND TR., <http://oakclt.org/about/history/> [https://perma.cc/TDD3-S94P].

¹⁴² *Id.*

¹⁴³ *Id.*; *Our Work is Currently Focused on Three Main Areas*, OAKLAND COMMUNITY LAND TR., <http://oakclt.org/about/our-work/> [https://perma.cc/2245-TY6C].

¹⁴⁴ Telephone Interview with Steve King, *supra* note 139.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*; CAL. REV. & TAX. CODE § 3791.4 (West 2010).

¹⁴⁷ *Id.* Nonprofits have been displaced through rising rents in Oakland, the city where Uber purchased a 330,000-square-foot building in downtown Oakland in 2015. *Id.*; Caille Millner, *Uber Is Coming for Oakland's Soul, All Right*, S.F. CHRON. (Sept. 25, 2015, 12:09 PM), <http://www.sfchronicle.com/entertainment/article/Uber-is-coming-for-Oakland-s-soul-all-right-6528037.php> [https://perma.cc/E795-RHRV].

fornia.¹⁴⁸ Although the OakCLT qualified for Federal Neighborhood Stabilization Program funds during the foreclosure crisis,¹⁴⁹ it now needs another source of permanent subsidy. A City of Oakland infrastructure bond was recently approved in November of 2016 that sets aside \$100 million for affordable housing and could provide the subsidy that the OakCLT is looking for.¹⁵⁰

Providing another model, the Bay Area CLT (“BACL T”), based in Berkeley, has the mission to provide permanently affordable, resident-owned cooperative housing to low-to-middle income people from diverse backgrounds.¹⁵¹ It advocates for cooperative ownership, as well as cohousing - a lifestyle where people share resources or space within a common living area, and live cooperatively.¹⁵² These ideas are a natural fit in the city of Berkeley, which has an abundance of existing cooperatives and a history of progressive politics.¹⁵³

BACL T has two Limited Equity Housing Cooperatives (“LEHCs”)¹⁵⁴ in its housing portfolio: Ninth Street Coop and Derby-Walker House.¹⁵⁵ In 2015, the Ninth Street Coop, already 28 years in existence¹⁵⁶, decided to transfer a portion of the value of its land to the Bay Area CLT and sign a ground lease with them.¹⁵⁷ Residents of this cooperatives made this decision to transfer some of the land to BACL T since the partnership would ensure “that the units [would] remain permanently affordable to lower income people, and that the property [would] be well-managed far into the

¹⁴⁸ Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* 1 (Office of Pol. Dev. & Research, U.S. Dep’t of Hous. & Urban Dev., Working Paper No. EMAD-2014-01, 2014), https://www.huduser.gov/portal/publications/Redevelopment_WhitePaper.pdf [<https://perma.cc/96BH-F6KL>].

¹⁴⁹ *OakCLT Timeline*, *supra* note 141.

¹⁵⁰ *Oakland Measure KK: Investing in Oakland’s Infrastructure and Affordable Housing*, CITY OAKLAND CAL., <http://www2.oaklandnet.com/ibond2016/index.htm> [<https://perma.cc/RR4T-6E9K>].

¹⁵¹ BAY AREA COMMUNITY LAND TR., <http://bayareact.net/BACL T/Home.html> [<https://perma.cc/DYR5-REVA>].

¹⁵² *Co-op, Cohousing: What’s the Connection?*, BAY AREA COMMUNITY LAND TR., http://bayareact.net/Co-op_Cohousing_Connection.html [<https://perma.cc/V3N9-4EY6>].

¹⁵³ CMTY. OWNERSHIP ORG. PROJECT, *THE CITIES’ WEALTH* 1, 24 (1976), <https://ecommons.cornell.edu/bitstream/handle/1813/40494/CitiesWealth.pdf> [<https://perma.cc/2GC9-74X5>].

¹⁵⁴ Limited Equity Cooperatives are termed Limited-Equity Housing Cooperatives in California. Cal. Gov’t Code § 62120.7 (West).

¹⁵⁵ *Projects*, BAY AREA COMMUNITY LAND TR., <http://www.bayareact.org/projects/> [<https://perma.cc/NZ2K-36X5>].

¹⁵⁶ E-mail from Rick Lewis, Exec. Dir., Bay Area Cmty. Land Tr., to Julie Gilgoff (Apr. 26, 2017, 9:34 PM) (on file with author).

¹⁵⁷ *Ninth Street Co-op Becomes a BACL T Project!*, BAY AREA COMMUNITY LAND TR., <http://bayareact.net/BACL T/NinthSt.html> [<https://perma.cc/S7NH-Z2QK>].

future, even after current residents move out.”¹⁵⁸

There are significant barriers to creating new LEHCs in California.¹⁵⁹ Local CLTs in the Bay Area have therefore utilized a new cooperative model, called the Non-equity Co-op (“NEC”).¹⁶⁰ The primary difference with the LEHC model is that NECs operate as rentals.¹⁶¹ There is no share purchase - the residents remain renters of the property rather than shareholders.¹⁶² As a result, the property remains tax-exempt, since nonprofit rental housing in California is exempt from property taxes if the residents have incomes below 80% of the area median income (“AMI”).¹⁶³ This tax status can significantly reduce operating costs and make an NEC cooperative affordable to lower-income members.¹⁶⁴ The BACL T utilized this model in their most recent project, “Brown Shingle.” The NEC model is becoming increasingly popular in California due to regulatory restrictions on Limited Equity Coops.¹⁶⁵

At this point in BACL T’s organizational history, it has largely been limited to acquiring land that sells for below-market rate, is donated or transferred to it.¹⁶⁶ BACL T may have more options to purchase property in the future, if the city of Berkeley approves a small-sites acquisition fund, similar to that which exists in San Francisco.

There is currently the potential to open a CLT in the City of Richmond, one of the last enclaves of affordable housing in the East Bay.¹⁶⁷ Richmond is now experiencing rapid population growth because of resident displacement from surrounding ar-

¹⁵⁸ *Id.*

¹⁵⁹ See generally Rick Lewis, *Challenges Abound in Creating New Housing Cooperatives in the San Francisco Bay Area*, COOPERATIVE HOUSING BULL., Summer 2015, at 8.

¹⁶⁰ *Id.* See also E-mail from Rick Lewis, Exec. Dir., Bay Area Cmty. Land Tr., to Julie Gilgoff (Apr. 26, 2017, 9:34 PM) (on file with author) where Lewis explains that Bay Area CLTs ended up not coining the non profit coop model as “RONs”, but rather “NECs”, or zero-equity coops.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ E-mail from Rick Lewis, Exec. Dir., Bay Area Cmty. Land Tr., to Julie Gilgoff (July 16, 2016, 10:45 AM) (on file with author)

¹⁶⁶ E-mail from Rick Lewis, Exec. Dir., Bay Area Cmty. Land Tr., to Julie Gilgoff (Apr. 26, 2017, 9:34 PM) (on file with author). Lewis explains that although BACL T has taken out mortgages on each of their properties, including for renovations, BACL T has been limited to purchasing properties that sell below market rate.

¹⁶⁷ Alex L. Weber, *Land Trusts: Conserving Homeownership*, RICHMOND CONFIDENTIAL (Oct. 26, 2009, 6:04 AM), <http://richmondconfidential.org/2009/10/26/land-trusts-conserving-homeownership/> [https://perma.cc/58NE-A2S2].

eas.¹⁶⁸ While dealing with an influx of residents from Berkeley, Oakland, San Francisco, and other areas, progressive City of Richmond officials have successfully defeated Chevron-backed politicians in local elections.¹⁶⁹ This is a ripe time, amidst a supportive political base for the creation of a Community Land Trust in the City of Richmond before it experiences the sort of gentrification and displacement of surrounding areas.

Generating city-specific funds for the acquisition of new CLT land has been a successful tactic of Bay Area CLTs. In San Francisco, they were able to create the small-sites acquisition fund and in Oakland the infrastructure bond.¹⁷⁰ The City of Berkeley also recently passed a ballot measure that raised the rental unit business license taxes for landlords that own five or more units, in order to fund affordable housing.¹⁷¹ The consortium of Bay Area CLTs, is a useful forum to share strategies on how to raise these funds and introduce local ballot measures for permanently affordable housing initiatives.

The stakes for implementing permanently affordable housing in the Bay Area are extremely high. There has already been substantial and disproportionate displacement of African Americans in gentrifying neighborhoods, as well as a loss in African American homeownership.¹⁷² Between 1990 and 2011, the proportion of African Americans in all Oakland Neighborhoods decreased by nearly 40%.¹⁷³ African Americans dropped from being 50% to 25% of all homeowners in North Oakland.¹⁷⁴ During the same time period, San Francisco's Black population was cut in half from about 10% to only 5% of the population.¹⁷⁵

CLTs and other non-market based approaches to housing and community development are just part of the solution to the cur-

¹⁶⁸ Adam Hudson, *Early-Stage Gentrification: Richmond, California, Residents Push Back*, TRUTHOUT (July 17, 2015) <http://www.truth-out.org/news/item/31926-early-stage-gentrification-richmond-california-residents-push-back> [<https://perma.cc/6D5Y-N8VY>].

¹⁶⁹ *Id.*

¹⁷⁰ Office of the Mayor, City & Cty. of S.F., *supra* note 140; *Oakland Measure KK*, CITY OF OAKLAND, CAL., <http://www2.oaklandnet.com/ibond2016/index.htm> [<https://perma.cc/X68W-6XPR>].

¹⁷¹ Aleah Jennings-Newhouse et al., *City Measures T1, U1, V1, W1, X1, Y1, Z1, AA Pass; Measures BB, CC, DD Fail*, DAILY CALIFORNIAN (Nov. 9, 2016), <http://www.dailycal.org/2016/11/09/city-measures-t1-u1-v1-w1-x1-y1-z1-aa-pass-measures-bb-cc-dd-fail/> [<https://perma.cc/AT7V-STL3>].

¹⁷² CAUSA JUSTA, *supra* note 39, at 7.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

rent housing crisis.¹⁷⁶ A multi-faceted solution including enforcement of tenant protections, maintenance of existing affordable units, relocation benefits for displaced community members, as well as additional subsidies and funding for affordable housing would more adequately combat displacement.¹⁷⁷ Additional models of permanently affordable housing are being piloted by Bay Area groups. The Sustainable Economies Law Center and People of Color Sustainable Housing Network have been promoting a new form of permanently affordable housing called the Permanent Real Estate Cooperative (“PREC”).¹⁷⁸ This innovative model “combines features of CLTs, limited equity housing cooperatives, real estate investment cooperatives, and self-organizing social movements.”¹⁷⁹ One of the major differences between CLTs and PRECs is the governance structure. Instead of relying on the Board of Directors of a CLT, as mandated by its 501(c)(3) status, the cooperatively run PREC further democratizes decision making by implementing the one-member one-vote system.¹⁸⁰

Just as the Bay Area is facing the worst housing crisis in the country, it is also offering some of the most innovative solutions, with a proliferation of CLTs, and other permanently affordable models to resist mass displacement.

III. STRATEGIES TO SUPPORT THE GROWTH OF LAND BANKS, LIMITED INCOME COOPS AND COMMUNITY LAND TRUSTS

As outlined in Section I, it is economically and socially advantageous for the government to encourage the development of permanently affordable housing. Further, the government has the responsibility to combat displacement of communities of color due to discriminatory policies that helped create the crisis. The following section provides an outline of the steps that federal, state, and local governments, as well as lending institutions, should now take to support these housing initiatives.

¹⁷⁶ *See id.* at 59.

¹⁷⁷ *Id.* at 58-60, 68.

¹⁷⁸ E-mail from Sara Stephens, Hous. and Coops. Att’y, Sustainable Econs. Law Ctr., to Julie Gilgoff (Dec. 14, 2016, 3:17 PM) (on file with author).

¹⁷⁹ Sustainable Econs. Law Ctr. & People of Color Sustainable Hous. Network, Permanent Real Estate Cooperatives: The Basics and FAQ (on file with author).

¹⁸⁰ *Id.*; Janelle Orsi, *Home Ownership is Dead! Long Live the Permanent Real Estate Cooperative!*, SUSTAINABLE ECONOMIES L. CTR. (Aug. 10, 2016), http://www.thesehc.org/homeownership_is_dead [<https://perma.cc/8X2S-K3WD>].

A. *Preserving Tax-Delinquent Properties for Affordable Housing, Rather Than Auctioning the Properties to Private Bidders*

There are derelict buildings where landlords have not paid taxes, made mortgage payments, or kept the buildings in good repair. A city could seize such properties and convert them to permanently affordable housing or auction to a nonprofit such as a CDC or CLT.¹⁸¹ Giving nonprofits priority over private developers in bidding on tax delinquent-properties is part of California law.¹⁸² New York housing advocates are pushing for the same type of law to be passed in their state in order to help seed emerging CLTs.¹⁸³ They want to allow CLTs to convert boarded up, unused properties into affordable housing, and also help struggling homeowners stay in their homes, ending the tax lien sale policies whereby the city and banks profit from a homeowner missing her monthly payments. Policies should reflect a city's priority to help people have adequate housing rather than profiting from their inability to make what often amounts to inflated payments due to unreasonably high interest rates.¹⁸⁴

Further, cities have the power to use eminent domain for public use, and could use this power to seize foreclosed and tax delinquent homes, converting them into affordable units.¹⁸⁵ Once the property is seized, cities can make a decision to retain ownership of the land and manage it through a Land Bank or CLT, or to turn the property over to a nonprofit organization, which would manage the property and preserve its affordability.

Massachusetts utilizes eminent domain to achieve these goals. Massachusetts General Laws, Chapter 121A, outlines that the elimination of blighted or substandard areas in cities is considered a public use, which qualifies the land for seizure through eminent domain.¹⁸⁶ Under Section 11 of Chapter 121A, government agen-

¹⁸¹ See, e.g., Higgins, *supra* note 101.

¹⁸² CAL. REV. & TAX. CODE § 3791.4 (West 2010).

¹⁸³ Telephone Interview with Leo Goldberg, Senior Policy Assoc., Ctr. for N.Y.C. Neighborhoods (July 15, 2016).

¹⁸⁴ See Lartey, *supra* note 114.

¹⁸⁵ See discussion of Dudley Street Neighborhood Initiative *infra*.

¹⁸⁶ MASS. GEN. LAWS ch. 121A, § 1 (1998). Public use is a legal requirement under the Takings Clause of the Fifth Amendment. See also U.S. CONST. amend. V ("nor shall private property be taken for public use without just compensation"). Thus, if property is seized by eminent domain for public use, the property owner must be paid "just compensation." *Id.* In a series of court decisions such as *Berman v. Parker*, 348 U.S. 26, 33 (1954), the Court has expanded what a public use could be, from not just being used by the public in the case of highways or parks, but also a project that makes the city more visually attractive. In *Kelo v. City of New London*, 545 U.S. 469, 500 (2005)

cies like the Boston Redevelopment Authority “may delegate the exercise of eminent domain [to] urban redevelopment corporations for certain projects.”¹⁸⁷ With the approval of the local housing board, an authorized corporation may take land by eminent domain.¹⁸⁸ Although eminent domain is not a power that should be delegated widely to non-governmental organizations, Boston’s local government has devised a process to vet the organizations that will use this authority for the community’s benefit.¹⁸⁹

Dudley Street Neighborhood Initiative (“DSNI”) is a nonprofit community-based group in Boston which became an urban redevelopment corporation and was authorized under state law to exercise the governmental power of eminent domain.¹⁹⁰ DSNI developed a long-term plan for the neighborhood, focusing on the establishment of an “urban village” with a park, retail shops, community centers, and affordable housing.¹⁹¹ The key to their plan was to promote “[d]evelopment without displacement.”¹⁹² The city donated the land that was needed, but the city-owned land was interspersed with private property, which needed to be seized through eminent domain in order to complete the urban village.¹⁹³

Allowing this nonprofit to seize abandoned property for the creation of affordable housing was a power facilitated by state law.¹⁹⁴ Although some might argue that eminent domain should not be delegated to non-governmental organizations and used to

(O’Connor, J., concurring), the court declared that a city could use its eminent domain power to seize private property to sell to private developers, under the basis that it would generate jobs and tax revenue.

¹⁸⁷ Elizabeth A. Taylor, Note, *The Dudley Street Neighborhood Initiative and the Power of Eminent Domain*, 36 B.C. L. REV. 1061, 1075 (1995); see also MASS. GEN. LAWS ch. 121A, § 11 (1975).

¹⁸⁸ Ch. 121A § 11.

¹⁸⁹ Taylor, *supra* note 187, at 1075.

¹⁹⁰ *Id.* at 1077-80. The neighborhood had been devastated by white flight and disinvestment in the 1980s, leaving more than 20% of the land vacant. Penn Loh, *How One Boston Neighborhood Stopped Gentrification in Its Tracks*, YES! MAG. (Jan. 28, 2015), <http://www.yesmagazine.org/issues/cities-are-now/how-one-boston-neighborhood-stopped-gentrification-in-its-tracks> [https://perma.cc/368G-59DB]. To obtain approval, DSNI submitted an application to the Boston Redevelopment Authority and then a plan to the City Council and Planning Board about their vision to revitalize the Dudley Street neighborhood. Taylor, *supra* note 190, at 1075-76 (outlining requirements to obtain project approval).

¹⁹¹ Taylor, *supra* note 187, at 1079.

¹⁹² PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD* 108 (1994).

¹⁹³ Taylor, *supra* note 187, at 1080.

¹⁹⁴ See Taylor, *supra* note 187.

develop affordable housing, the use of eminent domain has already strayed so far from its legislative intent to include private development as “public use.”¹⁹⁵ The creation of affordable housing more closely parallels the purpose of eminent domain, which is reclaiming land for use by the community, and the tactics implemented in Boston by DSNI should be replicated elsewhere.

B. Providing Favorable Loans and Allocating Housing Funds to Permanently Affordable Models

Local, state, and federal governments can provide financial support to permanently affordable housing initiatives.

[F]ederal funds that are offered to nonprofit 501(c)(3) corporations for the construction of affordable housing or the redevelopment of low-income neighborhoods can be used . . . by CLTs. The two federal programs from which CLTs have received the greatest project support over the past decade have been the Community Development Block Grant Program (CDBG) and HOME.¹⁹⁶

State Housing Finance Agencies in various states such as Colorado, Massachusetts, Michigan, Minnesota, New Hampshire, North Carolina, Oregon, Washington, Wisconsin, Wyoming, and Vermont have also provided financing for CLT-housing.¹⁹⁷ “In Delaware, the State Housing Authority has taken the lead, along with the Delaware Housing Coalition, in helping to create a CLT that will act as the steward of affordability for resale-restricted, owner-occupied housing throughout the state.”¹⁹⁸

Many cities have also provided interest-free or low-interest loans to CLTs. Cooper Square CLT qualified for a no-interest renewable loan from New York City for rehabilitation of the buildings in the Lower East Side of Manhattan.¹⁹⁹ Northern California Land Trust (“NCLT”) purchased property through a low-interest loan from the City of Berkeley, with a 30-year term.²⁰⁰ A condition of this loan was that “no annual payments need[ed] to be made

¹⁹⁵ See *Kelo v. City of New London*, 545 U.S. 469, 500 (2005) (O’Connor, J., concurring).

¹⁹⁶ JOHN EMMES DAVIS, *STARTING A COMMUNITY LAND TRUST: ORGANIZATIONAL AND OPERATIONAL CHOICES* 51 (2007), <http://community-wealth.org/sites/clone.community-wealth.org/files/downloads/tool-burlington-startingCLT.pdf> [<https://perma.cc/P9BL-RZP9>].

¹⁹⁷ *Id.* at 53.

¹⁹⁸ *Id.*

¹⁹⁹ Angotti, *supra* note 21, at 11.

²⁰⁰ *Id.* at 12.

unless there [was] a positive cash flow”²⁰¹ There was also a guarantee that after the 30-year term expired, the loan could be renewed.²⁰² Some of Berkeley’s loan went to rehabilitation costs, to pay for the property, as well as to pay tenants for their labor in building and fixing up the house.²⁰³

Especially with big banks and lending institutions reluctant to lend money to CLTs for the acquisition of land, it falls to local, state, and federal governments to allocate money from their budgets to permanently affordable housing initiatives.²⁰⁴ Favorable loans like the ones given by Berkeley and New York City benefit the city and residents in the long run.

C. *Creating a Favorable Tax Structure*

As the National Community Land Trust Network states in a 2011 publication, property tax assessments can make the difference to a low- to mid-income family on whether the unit is affordable.²⁰⁵ Property taxes are added on to the homeowner’s monthly housing costs after the value of the land is assessed.²⁰⁶ If the assessed value of CLT homes increases during tax assessments due to the appreciation of the land and neighborhood, this would result in diminished affordability for whoever is paying the increased tax amount (either the CLT, homeowner, or resident).²⁰⁷ The primary goal of permanently affordable housing is to keep the value fixed at the purchasing price with modest adjustments for improvements, inflation, or the consumer price index.²⁰⁸ Therefore, CLTs and limited income coops need a supportive tax structure to accomplish their mission.

Most CLTs do not seek exemption from property taxes for their homeowners; residents of CLT homes consume local government services to the same extent as other residents of the community.²⁰⁹ However, taxes must be kept fixed, as long as resale rates of

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Interview with Rick Lewis, Exec. Dir., Bay Area Cmty. Land Tr., in Berkeley, Cal. (May 26, 2016).

²⁰⁵ NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-1.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Orsi, *supra* note 180. *See also* NAT’L CMTY. LAND TRUST NETWORK, PERMANENTLY AFFORDABLE HOUSING: SECTOR CHART & GLOSSARY OF TERMS (2015), <http://cltnet.org/wp-content/uploads/2015/01/Permanently-Affordable-Housing-Sector-Chart-Glossary-11-2014-design-update.pdf> [<https://perma.cc/3ZJE-8FEZ>].

²⁰⁹ NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-1.

the housing units are capped. Any form of “shared equity homeownership” should be taxed differently from unrestricted properties.²¹⁰ Although the locale would be losing on tax revenue from appreciating property taxes, there is greater value in providing permanently affordable housing to communities that need it the most.

CLTs have argued specifically that for tax purposes, the market value of the homeowner’s property should be defined as equal to the CLT’s purchase option price (the maximum permitted resale price) at the time of tax assessment.²¹¹ Florida²¹² and North Carolina²¹³ codes tax Community Land Trust property at lower rates than unrestricted properties. The Vermont tax code phrases its policy more broadly, that all forms of shared equity homeownership are taxed at a lower rate than market-rate private property.²¹⁴ In some states like New Jersey, courts have stepped in to uphold reduced assessments for shared-equity homes.²¹⁵

“In many states, local tax assessment practices are guided . . . by various[] . . . state agencies (e.g. California’s Tax Equalization Board, or New York’s Office of Real Property Services [ORPS]).”²¹⁶ These agencies interpret the applicable law (legislation and/or case law) and assist local assessors in complying with it, but taxation

²¹⁰ Shared equity homeownership refers to joint ownership of real estate by both lenders and property dwellers. It is a mix of ownership and rental models, and includes CLTs along with LECs, mutual housing associations (“MHAs”), and deed-restricted housing, all of which ensure property affordability through sale-restriction. When a shared-equity property is sold, owners share in the proceeds, or equity. In the meantime the property occupants benefit from interest and property tax write-offs. Shared equity homeownership ensures that the homes remain affordable to lower income households on a long-term basis by restricting the appreciation that the owner can retain. *See generally* JOHN EMMEUS DAVIS, NAT’L HOUS. INST., SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUSING (2006), <http://www.nhi.org/pdf/SharedEquityHome.pdf> [<https://perma.cc/ZF7M-Z9Z8>].

²¹¹ NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-2.

²¹² FLA. STAT. § 193.018 (2011); FLA. CMTY. LAND TR. INST., FREQUENTLY ASKED QUESTIONS 3 (2012), <http://www.flhousing.org/wp-content/uploads/2012/04/CLT-FAQ-final.pdf> [<https://perma.cc/VY2S-GUHK>] (“Florida Statute 193.018 instructs property appraisers to assess CLT properties in accordance with the resale-restricted value, rather than the price that the property would fetch on the open market.”).

²¹³ NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-6.

²¹⁴ John Emmeus Davis, *Taxation of Shared-Equity Homes*, SHELTERFORCE (June 11, 2008), http://www.shelterforce.org/article/952/taxation_of_shared_equity_homes/ [<https://perma.cc/K9F3-8QTY>] (“[T]he Vermont Law on Property Tax Appraisals of Covenant-Restricted Homes, enacted in 2005, says that procedures for estimating the fair-market value of a property must take into consideration any ‘decrease in value in non-rental residential property due to a housing subsidy covenant’”).

²¹⁵ *See* Prowitz v. Ridgefield Park Vill., 584 A.2d 782 (N.J. 1991); NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-3.

²¹⁶ NAT’L CMTY. LAND TR. NETWORK, *supra* note 19, at ch. 17-3.

of shared equity homes is not applied as uniformly as in Florida, Vermont, and other states with a blanket policy.²¹⁷

In a nation-wide study of tax assessment by the Lincoln Institute of Land Policy, “New York was the only state where there was absolutely no consensus on assessment methods for resale-restricted property.”²¹⁸ Tax subsidies were granted for individual limited equity cooperatives, for example, receiving complete or partial exemption from real estate taxes for up to 40 years under Article XI of the New York Private Housing Finance Law.²¹⁹ But each limited equity coop needs to be individually chartered to receive an Article XI exemption, and it is difficult to qualify.²²⁰

Despite the lack of consensus on how CLT property should be taxed in New York, there is a growing trend to consider resale restrictions in the valuation of land.²²¹ The Office of Real Property Tax Services (“ORPTS”), a division within the New York State Department of Taxation and Finance releases guidance on this issue, and points to the New Jersey *Prowitz* case that upheld a permanent resale restriction, although this decision is not binding in New York.²²² ORPTS has not gone so far as to set a policy and instead is waiting to let another branch of government clarify the situation.²²³ “The *de facto* policy is that assessors can, and in some cases do, consider resale restrictions in assessment, but if the assessor does not, CLTs’ homeowners cannot force consideration.”²²⁴

To encourage the proliferation of CLTs, and the feasibility of permanently affordable housing, a uniform tax structure should be adopted in all fifty states, taxing restricted, shared equity housing at a lower rate than unrestricted market rate homes.

²¹⁷ *Id.*

²¹⁸ West, *supra* note 103, at 19 (citation omitted).

²¹⁹ N.Y. PRIV. HOUS. FIN. LAW § 577(3)(a) (McKinney 2009); *Article XI*, N.Y.C. HOUSING PRESERVATION & DEV., <https://www1.nyc.gov/site/hpd/developers/tax-incentives-article-xi.page> [<https://perma.cc/RNF5-QFVE>].

²²⁰ See *Article XI*, *supra* note 221.

²²¹ See generally West, *supra* note 103; see also Office of Real Prop. Tax Servs., N.Y. Dep’t of Tax. & Fin., Opinions of Counsel No. 11-29 (Apr. 10, 2002); Office of Real Prop. Tax Servs., N.Y. Dep’t of Tax. & Fin., Opinions of Counsel No. 10-34 (Apr. 25, 1997); Office of Real Prop. Tax Servs., N.Y. Dep’t of Tax. & Fin., Opinions of Counsel No. 10-45 (Mar. 6, 1996).

²²² West, *supra* note 103, at 21; Office of Real Prop. Tax Servs., N.Y. Dep’t of Tax. & Fin., Opinions of Counsel No. 10-34 (Apr. 25, 1997); see also *Prowitz v. Ridgefield Park Vill.*, 584 A.2d 782 (N.J. 1991).

²²³ West, *supra* note 103, at 20.

²²⁴ West, *supra* note 103, at 20 (emphasis added).

D. Additional Oversight for Banks

The Federal Community Reinvestment Act (“CRA”) is “intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods”²²⁵ Under the CRA, each depository institution’s record is “evaluated by the appropriate Federal financial supervisory agency,” in terms of how it was able to “help meet the credit needs of the communit[y]” in which it is based.²²⁶ Members of the public may submit comments on a bank’s performance.²²⁷ Comments are supposed to “be taken into consideration during the next CRA examination. A bank’s CRA performance record is taken into account in considering an institution’s application for deposit facilities.”²²⁸

“The CRA was passed as a key element of the 1977 Housing and Urban Development Act, whose stated purpose was to outlaw ‘redlining.’”²²⁹ Beyond creating more accountability for banks to desist from engaging in redlining practices, the statutory goal of meeting the credit needs of low-income communities has largely not been enforced.²³⁰ It falls to volunteer groups of residents to accumulate data and prove that banks have not been meeting their needs.²³¹ In 1998, a group of Brooklyn residents living in neighborhoods experiencing gentrification testified before the Federal Reserve Board of Governors about lending practices of big banks in their neighborhoods.²³² The group of activists, small business owners, and other residents of Brooklyn Community District 5 started meeting with bankers and banking regulators with data they had

²²⁵ *Community Reinvestment Act*, BD. GOVERNORS FED. RES. SYS., https://www.federalreserve.gov/communitydev/cra_about.htm [https://perma.cc/G53F-BULA] (“[The CRA] was enacted by the Congress in 1977 (12 U.S.C. 2901) and is implemented by Regulation BB (12 CFR 228). The regulation was substantially revised in May 1995 and updated again in August 2005.”).

²²⁶ *Id.*

²²⁷ *Id.* See, e.g., Fed. Reserve Bd., Public Meeting Regarding Citicorp and Travelers Group, Transcript of Panel Eleven (June 25, 1998), <https://www.federalreserve.gov/events/publicmeeting/19980625/panel11.htm> [https://perma.cc/9UMY-8BR2]. Members of the Reinvestment Committee of Cypress Hills and City Line of Brooklyn, NY testified about the lending practices of the banking institutions in their neighborhoods before the Federal Reserve Board.

²²⁸ *Community Reinvestment Act*, *supra* note 225.

²²⁹ Penny Loeb et al., *The New Redlining*, U.S. NEWS & WORLD REP., Apr. 17, 1995 (defining redlining as “a refusal by a financial institution to make mortgage loans to certain neighborhoods because of their racial composition, income level, or age of residents”).

²³⁰ See Abello, *supra* note 33.

²³¹ See, e.g., *id.*

²³² *Id.*; Fed. Reserve Bd., *supra* note 227.

collected about redlining practices.²³³ While the initial focus of the group was redlining, the group also addressed the threat of gentrification more generally, advocating for banks to provide greater lending and other support for equitable economic development.²³⁴ It took seven years of a volunteer, resident-led group, accumulating Home Mortgage Disclosure Act data from their neighborhood's census tracts to try to hold their banks accountable to providing for their needs in the face of displacement.²³⁵

A 2015 report issued by the Association for Neighborhood and Housing Development (“ANHD”) outlined that “[t]he average community development loan size went up, but fewer loans went out” compared to the year before.²³⁶ “Eight of 20 banks reported that none of their community development loans fell under the economic development category.”²³⁷ Although the CRA is a mechanism for local groups to get banks to discuss their community practices, it takes the ongoing advocacy work of organizations like ANHD and District 5 residents to bring any enforceability to the CRA, rather than enforcement coming from government institutions that reimburse residents for their involvement in assessing their banks. As it is now, about “98 percent of banks receive satisfactory or outstanding CRA ratings.”²³⁸ A stricter enforcement of the CRA including a requirement that banks assist in the creation of permanently affordable housing solutions by giving loans to CLTs is one example of how banks should be required to comply with the CRA.²³⁹ Mandatory resident involvement in assessing the

²³³ Abello, *supra* note 33. District 5 is comprised of the East New York, Cypress Hills, and City Line neighborhoods.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* The ANHD is an organization that publishes a yearly “State of Bank Reinvestment report, analyzing the local impact of the CRA, highlighting industry trends, and identifying and comparing how individual banks do or don’t meet NYC’s credit and banking needs.” *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ A more optimistic view of the CRA claims that, since its “enactment in 1977, banks have significantly increased their lending in [low- and moderate-income (“LMI”)] neighborhoods.” Richard D. Marsico, *Enforcing the Community Reinvestment Act: An Advocate’s Guide to Making the CRA Work for Communities*, 27 N.Y. L. SCH. J. HUM. RTS. 129, 129 (2000). This view argues that the primary enforcement agents of the CRA have been community-based not-for-profit organizations who have used the CRA to “advocate[] for banks to lend more money to LMI neighborhoods to support affordable housing, small businesses, community development projects, and consumer credit needs.” *Id.* This argument may be useful for community advocates interested in using the CRA to increase lending in their neighborhoods. OneUnited Bank provides a model of how a bank can use innovative practices to promote CLT homes and meet the needs of low-income communities. Press Release, OneUnited Bank, OneUnited

banks' performance should also be required.

Banks must also change the way they issue mortgage loans in the cases of limited income coop and CLTs to achieve a passing score under the CRA. Some CLTs have developed relationships with local banks that understand their mission, and others have even established their own revolving loan funds.²⁴⁰ A CLT has the capacity to underwrite individual mortgages, and could even help prevent foreclosure of individual homes by stepping in to cure default.²⁴¹ Lending institutions can and should assist CLTs in helping to prevent foreclosure. The Federal National Mortgage Association ("FNMA," commonly known as Fannie Mae)²⁴² even has a Uniform CLT Ground Lease Rider that allows the CLT to intervene if foreclosure is imminent.²⁴³

Besides federal regulation of banking practices, cities can also do their part in mandating that banks invest in low-income communities. When the city of Oakland chose JP Morgan Chase to handle its municipal deposits in 2013, for example, the City Council made the bank promise to invest in low-income neighborhoods, "especially in Oakland's under-served Black and Latino communities."²⁴⁴ Despite this promise, most of the bank's residential loans

Bank Introduces Unity Community Land Trust Home Loan Program (Sept. 1, 2016), <https://www.oneunited.com/PressKit/PressReleases/oneunited-bank-introduces-unity-community-land-trust-home-loan-program.pdf> [https://perma.cc/Z6HM-AAC7]. OneUnited is a Black-owned bank that devised a loan specifically for CLTs, and works together with the Dudley Street Neighborhood Initiative to promote their community development plan that preserves housing for the local community. *Id.*

²⁴⁰ MEAGAN EHLENZ, NAT'L CMTY. LAND TR. NETWORK, LIMITED EQUITY COOPS BY COMMUNITY LAND TRUSTS A2, A3, C3 (2013), <http://cltnetwork.org/wp-content/uploads/2013/12/2013-Limited-Equity-Coops-by-CLTs.pdf> [https://perma.cc/94NE-WUEM].

²⁴¹ WEISS, *supra* note 15, at 10.

²⁴² Fannie Mae is one of the two largest mortgage companies in the U.S. See Kate Pickert, *A Brief History of Fannie Mae and Freddie Mac*, TIME (July 14, 2008), <http://content.time.com/time/business/article/0,8599,1822766,00.html> [https://perma.cc/RYK6-5VDN]. Along with Federal Home Loan Mortgage Corporation (Freddie), Fannie Mae was founded in 1938 during the Great Depression as part of the New Deal. *Id.* This government-sponsored enterprise ("GSE") expands the secondary mortgage market by securitizing mortgages in the form of mortgage-backed securities ("MBS"). FANNIE MAE, BASICS OF FANNIE MAE: SINGLE-FAMILY MBS 3 (2016), <http://www.fanniemae.com/resources/file/mbs/pdf/basics-sf-mbs.pdf> [https://perma.cc/MAF9-RY8J].

²⁴³ FANNIE MAE, COMMUNITY LAND TRUST GROUND LEASE RIDER (2010), https://www.fanniemae.com/content/guide_form/2100rev.pdf [https://perma.cc/WMP9-F65].

²⁴⁴ Darwin BondGraham, *JP Morgan Chase's Home Loans in Oakland Mostly Went to White and Wealthy Residents*, EAST BAY EXPRESS (Jan. 13, 2016), <http://www.eastbayexpress.com/oakland/jp-morgan-chases-home-loans-in-oakland-mostly-went-to-white-and-wealthy-residents/Content?oid=4640249> [https://perma.cc/3LXP-EGHS].

“were invested in houses in the city’s whitest and highest-income neighborhoods.”²⁴⁵ Now that the contract is expiring,²⁴⁶ Oakland might choose to bank with another institution that takes these promises more seriously, or at least hold Chase more accountable through a binding agreement in the future. Oakland is also considering establishing a public, city-owned bank as an alternative.²⁴⁷ Cities must wield their financial influence to urge banking institutions to change racist and classist lending practices.

Banks and other lending institutions, as well as the government, must play their part in helping low-to-mid-income communities procure housing and challenge the status quo of property ownership in America.

CONCLUSION

The current affordable housing crisis affects most Americans, many of whom are no longer able to purchase their own homes or rent in neighborhoods where they’d like to live. Although low-income communities of color are being hit the hardest, the current trend of displacement affects a broad array of middle-class and low-income residents, forcing them to move farther and farther from the city center where most jobs are located. If major cities were to become “citadels for the rich” as some portend,²⁴⁸ it would constitute an economic and social catastrophe.

A variety of mechanisms may stabilize land values, including public ownership, land banks, CLTs, rent controls, and resale restrictions on affordable housing units like limited income coops.²⁴⁹ All have a part to play in addressing the current housing crisis. CLTs, LECs, and land banks are parts of a broad community-based development strategy that reinforces non-market control of land. Past victories of implementing permanently affordable housing models have not come easy – they were the result of “decades-long organizing by tenants to secure support from the City.”²⁵⁰ At this point, although CLTs, LECs, and Land Banks have a limited pres-

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Gabrielle Cannon, *Will Oakland Become the First U.S. City to Ditch Wall Street and Establish a Public Bank?*, EAST BAY EXPRESS (Mar. 19, 2017), <http://www.eastbayexpress.com/oakland/will-oakland-become-first-us-city-to-ditch-wall-street-and-establish-a-public-bank/Content?oid=5812942> [<https://perma.cc/UD3T-3LQR>].

²⁴⁸ Badger, *supra* note 3.

²⁴⁹ Thomas J. Miceli et al., *The Role of Limited-Equity Cooperatives in Providing Affordable Housing*, 5 HOUSING POL’Y DEBATE 469, 469-70 (1994).

²⁵⁰ Angotti, *supra* note 21, at 22.

ence in large urban areas, they are likely to grow as city officials realize that permanently affordable housing models are in everyone's interests, and they are more effective than other affordable housing models that have been tried in the past.

As the former President of the MacArthur Foundation said in an event announcing the creation of the first city-sponsored Community Land Trust in Chicago, Illinois, "[t]here is mounting evidence that stable, affordable housing helps people get and keep jobs, advances their health and well-being, and is a vital ingredient for the economic vitality of neighborhoods, cities and regions."²⁵¹ CLTs and other forms of affordable housing discussed in this Note are the most effective way to achieve those goals by "safe-guarding . . . public investments for generations to come."²⁵²

²⁵¹ Jonathan Fanton, President, MacArthur Found., Remarks by Jonathan Fanton at Event Announcing Establishment of New Chicago Community Land Trust (Dec. 1, 2005), <https://www.macfound.org/press/speeches/remarks-jonathan-fanton-event-announcing-establishment-new-chicago-community-land-trust-december-1-2005/> [<https://perma.cc/FS9P-VUMM>].

²⁵² *Id.*