Shared Equity Homeownership State Policy Review

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Contents

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Note on Sources / Citations

Most of the information for this report was gleaned from the interviews noted above. Information used from the interviews is not cited in the report, but can be attributed to the contributors from the respective states listed. Any other sources used for additional information are cited in the footnotes.

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Introduction / Overview

Shared equity homeownership encompasses a variety of programs, usually administered by the public sector or nonprofit organizations, that provide long-term (generally, 30 years or more) or permanent affordable homeownership opportunities to low- and moderate-income families. These programs typically involve the investment of large public subsidies to reduce the purchase price of homes, together with resale restrictions and / or appreciation-sharing mechanisms that help ensure the homes stay affordable to future purchasers and preserve the value of public subsidy. In some cases, shared equity homeownership is also facilitated by inclusionary zoning programs that require a modest share of new homes to be sold or rented at below-market rates.

A shared equity homeowner enjoys most of the benefits of traditional homeownership as well as added benefits, such as a level of insulation against home price declines, that can provide greater stability and sustainability than traditional homeownership. Well-structured shared equity homeownership programs offer opportunities for steady and substantial wealth building by homeowners, but limit the amount of home price appreciation homeowners may retain in the event that home prices increase.

Shared equity homeownership and the long-term affordability it affords provide a benefit to both the homeowner and the public or nonprofit entity subsidizing shared equity homes. This is because in addition to preserving affordability, shared equity homeownership strategies preserve the value of any subsidies invested in the home – a clear economic benefit to the entities financially supporting shared equity programs.

Although the federal government provides a large portion of the funding and develops many policies that affect the implementation of shared equity homeownership, state and local governments often play a more direct role in deciding how shared equity programs are funded and structured. Therefore, it is especially important to consider the state laws and regulations affecting the creation and implementation of shared equity programs at the state and local levels.

This report presents a review of programs and policies across 22 states that either support or hinder the development of shared equity homeownership units by state and local governments or nonprofit organizations. In some cases, state programs or policies stand in the way of local programs, making it difficult to effectively preserve affordable homeownership. In other cases, state governments have adopted policies intended to encourage and support local shared equity homeownership programs.

Overall, these programs and policies provide an illustrative guide for ways to improve state regulations and practices to better promote long-term affordable homeownership and the preservation of homeownership subsidies, toward the goal of serving a substantially larger proportion of the families who qualify for current subsidies at little or no additional public cost

Remove Barriers to Local Implementation of Shared Equity Homeownership Programs

State governments can make it easier for local communities to preserve the affordability of homeownership units by removing potential barriers posed by state laws and state housing program regulations. Many states do not specifically define shared equity homeownership mechanisms or enable the use of these mechanisms. Furthermore, many states do not clearly specify how the value of shared equity homes should be assessed for tax purposes. Although specific state laws authorizing shared equity homeownership and the reasonable taxation of shared equity properties are not always necessary, creating such legislation can facilitate and guide the proper implementation of shared equity homeownership programs at the local level.

Finally, states can assure that their bond-funded mortgage products are available to shared equity homeowners, just as they are available to low- and moderate-income homeowners supported by more conventional affordable homeownership programs. These state mortgage programs offer a valuable source of affordable first mortgage financing to lower income homebuyers, which is another vital component to the ongoing success of shared equity homeownership programs.

Pass Authorizing Legislation

While it may not be necessary in many states, legislation that authorizes and regulates the use of shared equity homeownership, can help to eliminate any existing legal or regulatory barriers that may stand in the way of effective long-term affordable homeownership. It also provides practitioners and funders with greater certainty that such barriers will not crop up in the future, jeopardizing their investment.

In some states, laws, regulations or legal interpretations may create a barrier to implementation of shared equity homeownership. For instance, both Wisconsin and Texas have constitutional provisions that make it difficult to place long-term restrictions on private property. This complicates the process of using deed restrictions or covenants to preserve the affordability of homes over the long term, and especially in perpetuity. In both states, local governments have been able to establish shared equity homeownership programs, but this often involves intensive and expensive efforts to overcome these legal barriers. Furthermore, even when some jurisdictions are successful in creating shared equity homeownership programs, other jurisdictions in the same state may not be. This can be due to a lack of consistent standards and guidelines for enabling and establishing long-term affordable homeownership programs across the state.

Overall, there is great variation in how state constitutions and laws affect the creation and function of shared equity homeownership programs. Some states do not enable or define shared equity homeownership mechanisms, but give localities a great amount of freedom to design and implement these programs. But even in the states allowing flexibility in local regulation of affordable homeownership programs, authorizing legislation may still help to encourage and provide proper guidance for local programs that preserve affordability.

This section provides a review of authorizing legislation that facilitates the creation of the three major types of public or nonprofit shared equity homeownership mechanisms: deed restrictions / covenants, community land trusts and limited equity cooperatives.

Deed Restrictions / Covenants

This type of shared equity homeownership mechanism involves a restriction in the deed or a covenant linked to the property that regulates the resale price of the home and specifies who can purchase and live in the home. In addition to providing a formula that sets the affordable resale price, these restrictions often require that the home be sold to another low- or moderate-income buyer and must remain occupied by the owner. Deed restrictions / covenants are a common method used to maintain affordability in federally-funded or state-funded affordable housing programs and inclusionary zoning programs.

States with Legislation Authorizing Deed Restrictions / Covenant

Most states with legislation authorizing deed restrictions / restrictive covenants allow the use of resale price restriction and / or equity sharing requirements, but usually do not stipulate specific resale formulas —this is usually left to local discretion. Some states, like Vermont and Massachusetts, specify that covenants / restrictions may be perpetual or limited to a specific period of time. Since some states (such as Wisconsin and Texas – see box below) do not technically allow perpetual affordability restrictions, specific statutory language permitting perpetual affordability avoids any interpretation issues

In many states, localities have implemented deed restrictions and covenants without the passage of legislation, but some shared equity and other affordable housing advocates have pushed for legislation in certain states as a protection against potential legal challenges from homeowners. For example, Oregon passed legislation defining restricted covenants so that individual homeowners could not legally contest that they should be able to sell their homes without restrictions.

Below is summary information on sample deed restriction / covenant authorizing legislation from the states reviewed:

- *Vermont* - Title 27, Chapter 5, section 610 of the Vermont statutes[2] authorizes housing subsidy covenants. It addresses the duration of covenants, stating that they may be perpetual or limited to a designated period of time. It also addresses the types of restrictions that may be included in a covenant, including restrictions on resale price and the income of the homebuyer.

- *Maine* - Title 33, Chapter 6, Section121 of the Maine state code[3] defines affordable housing covenants. The statute allows a "qualified" entity, such as a government agency or nonprofit, that is "committed to providing opportunities for lower income or moderate-income households to obtain affordable housing" to control resale prices and the amount of home price appreciation provided to the homebuyer through the use of covenant.

- *Massachusetts* – Massachusetts General Laws, Chapter 184, Section 31[4] authorizes the use of an affordable housing restriction, "in the form of a restriction, easement, covenant or condition in a deed." The restriction may last in perpetuity for a specified period of time. The statute further

[2] Complete statute language is available at: availablehttps://www.agentxtra.net/Extranet/singlesource/NavMaster.asp?LinkID=5177106
[3] Complete statute language is available at: http://law.justia.com/maine/codes/title33ch0sec0/title33sec121.html
[4] Complete statute language available at: http://www.mass.gov/legis/laws/mgl/184-31.htm

states that the restriction can limit the use of the property to low- or moderate-income buyers and restrict the resale price in order to assure affordability to future low- and moderate-income buyers.

- *Oregon* – In 2007, the state passed HB 3485,[5] which defines an "affordable housing covenant" as an "interest in real property imposing limitations, restrictions or affirmative obligations that …ensure continued availability of affordable… owner-occupied housing for low or moderate income individuals. These covenants were being implemented across the state before passage of the bill, but community groups like Proud Ground, a community land trust in Portland, wanted an overarching statute to ensure they remain legal.

Community Land Trusts

The community land trust (CLT) model incorporates price restrictions as in the deed restriction / covenant model. However, the restrictions in a land trust are incorporated into a long-term ground lease. A nonprofit organization owns the underlying land and rents it – usually for a nominal amount – to the buyer, who owns only the home lying on the land. As long as the organization maintains ownership of the land, the homeowner must abide by the resale restrictions and other regulations (i.e., owner occupancy, income-eligible future buyers) contained in the ground lease.

States with Legislation Authorizing Community Land Trusts

Similar to deed restrictions / covenants, communities in several states included in this review have implemented community land trusts without authorizing legislation. However, in some states where localities can create CLTs without such legislation, advocates have pushed for CLT legislation both to avoid legal challenges from homeowners and to enable special funding sources for CLTs. For example, Texas' Homestead Preservation Act[6] enables CLTs to preserve homeownership in disadvantaged neighborhoods, helping ease the effects of gentrification. In addition, it also allows the creation of tax increment financing (TIF- see below for more detail) district used almost exclusively to fund a related CLT.[7]

Below is summary information on sample community land trust legislation from the states reviewed:

- *Connecticut* – Chapter 828a section 47-301 of Connecticut Statutes defines a CLT and establishes its powers, which include setting income requirements and creating self-extending ground leases for terms of up to 99 years.[8]

- *Illinois* – The state passed the Affordable Housing Planning and Appeal Act in 2003, which permits communities to implement CLTs for affordable housing needs. A community land trust

[5] Complete statute available at: http://www.leg.state.or.us/07reg/measpdf/hb3400.dir/hb3485.intro.pdf
[6] Texas Local Government Code - Chapter 373A Homestead Preservation Districts and Reinvestment Zones (full statute available at: http://law.onecle.com/texas/local-government/chapter373A.html).
[7] The Texas Legislature created the Homestead Preservation Act (HPA) specifically for a low-income community in the city of Austin that was undergoing rapid gentrification, but could modify the act to serve as a tool to preserve affordability in other gentrifying communities across Texas. It is important to note, however, that state legislation is not required for Texas localities to establish community land trusts. Localities are able to create land trusts that meet their own housing affordability goals, and do not have to adhere to the specific requirements stated in the HPA.
[8] Complete statute language is available at: http://www.bpichicago.org/documents/FInalAHPAA2003-2005_000.pdf

is defined as a "private, not-for-profit corporation…created to acquire and own land for the benefit of the local government, including the creation and preservation of affordable housing."[9]

- *Texas* - the Texas Homestead Preservation Act,[10] adopted in 2005, enables the use of CLTs for preserving homeownership in disadvantaged neighborhoods helping ease the effects of gentrification. Although this is a state-level statute, it was designed specifically for the establishment of CLTs within the city of Austin (stemming from the city's advocacy and guidance).

State Legal Barriers to Perpetual Affordability

Some states have specific laws or constitutional provisions that technically prevent perpetual affordable homeownership. These statutes and provisions generally exist to ensure property owners have the full rights to and control of property they purchase. Although these property owner protections are very important for conventional market-rate homeownership, their strict interpretation can become a barrier to long-term affordable homeownership in which subsidies are involved.

In the state of Wisconsin, a constitutional provision known as the "alienation clause" has been interpreted in practice to mean that no party can indefinitely separate the rights of a property owner from the property.[11]The implication of the alienation clause for price-restricted share equity homeownership units is that the state government will not allow *perpetual* deed restrictions / covenants. However, in general practice, the state or local governments have been even more conservative by generally not allowing deed restrictions / covenants running past 45 years. Therefore, the interpretation of the law has created a barrier for long-term affordable homeownership.

The state of Texas has very similar language in its state constitution. State and local governments generally interpret perpetual encumbrances on a home, like price-restrictions, as "unreasonable restraints on a person's ability to resell property." However, community land trusts in the state, such as PeopleTrust, have been able to overcome that barrier by developing a 99-year ground lease that is renewable at the end of the lease term. At the end of the term, the CLT is able to renew the lease for another 99 years. All homes lying upon CLT land remain price-restricted, and therefore affordable, for as long as the land trust exists.

Limited Equity Cooperatives

This model is typically applied in the context of an apartment or other multifamily development. Families purchase a "share" in a cooperative building or community, rather than purchasing a single property, as with a single-family home or condominium. Each member of the cooperative receives a right to occupy one unit, as well as a vote on matters of common interest. The shares must be sold at affordable levels to assist future low- and moderate-income buyers. Usually, the cooperative is financed with a below-market rate interest loan and may be otherwise subsidized in order to provide long-term affordability for cooperative owners .

[9] Complete statute is available at: http://www.bpichicago.org/documents/FInalAHPAA2003-2005_000.pdf *(page 4)*
[10] Texas Local Government Code - Chapter 373A Homestead Preservation Districts and Reinvestment Zones (full statute available at: http://law.onecle.com/texas/local-government/chapter373A.html).
[11] Wisconsin Constitution, Article I, Section 14. Available at: http://www.legis.state.wi.us/statutes/wisconst.pdf

States with Legislation Authorizing Limited Equity Cooperatives

Below is summary information on sample limited equity cooperative enabling legislation from the states reviewed:

- *California* - California's Health and Safety Code Section 33000-33013 authorizes limited equity cooperatives in the state and outlines their requirements.[12] These include the requirement for the cooperative to operate with share price resale restrictions for at least 20 years. In October 2009, the state passed Assembly Bill 1246, which updates the required structure of affordable housing cooperatives in order to allow for a wider range of public and private funding streams and resources that can better support the permanent affordability of such cooperatives.[13]

- *Vermont* – The state authorizes limited equity cooperatives in Title 11, Chapter 14, Section 1598 of its statutes.[14] It states that a cooperative housing corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing and preserving housing for persons and households of low and moderate income" The statute also lays out several regulations for maintaining long-term affordability, such as adherence to the limited equity formula when purchasing and reselling co-op shares and how the co-op's first right of refusal when a resident sells a share.

- *Minnesota* – The Minnesota statutes define limited equity cooperatives and set specific parameters for what percentage of residents must meet certain income requirements, for the purpose of maintaining affordability to low- and moderate-income households.[15]

<u>Alternatives to Authorizing Legislation</u>

Some states enable and / or regulate shared equity programs not through legislation, but through regulations developed by the state's housing / community development agency. For example, Connecticut's Department of Community and Economic Development requires that in any ownership project it has supported, a resale restriction and/or subsidy recapture mechanism be applied to the units.[16]

There are some states where shared equity mechanisms are allowed but not specifically authorized through legislation. In these states, most of the program design and guidance occurs at the local level. This type of state legal environment allowing jurisdictions to customize programs to their own needs can often serve well enough in promoting and cultivating. shared equity mechanisms. States with this type of legal environment may want to consider whether the use of authorizing legislation may more

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[12] Complete statute language is available at: http://law.justia.com/california/codes/hsc/33000-33013.html
[13] Complete statute language is available at: http://totalcapitol.com/?bill_id=9740
[14] Complete statute language is available at:
http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=11&Chapter=014&Section=01598
[15] Chapter 273.11 - complete statute language available at: https://www.revisor.mn.gov/statutes/?id=273.11
[16] Rules concerning limited equity cooperatives and affordable housing deed restrictions in Connecticut are promulgated as regulations by the Department of Community and Economic Development. For DECD-assisted ownership projects, DECD will require that a Resale and/or Subsidy Recapture restriction be applied to the units. If the sole financial assistance to a unit is a developer's subsidy (not combined with a buyer's subsidy), then the only type of restriction permitted is a resale restriction.

effectively promote and guide the use of shared equity mechanisms across the state. However, states should also be aware that the passage of legislation could complicate the implementation of shared equity homeownership by limiting its applicability, particularly if it sets very specific, narrow parameters for the use of shared equity.

In some cases, the absence of state legislation may open the door for legal challenges, even if a state does not technically prevent implementation of share equity homeownership. In Florida, for instance, no special authorizing legislation is required for restrictive covenants, CLTs or LECs. It is purely a local determination. However, the application of shared equity programs has been challenged by homeowners in some localities. For example, owners of price-restricted homes have questioned whether a resale formula is fair under certain market / economic conditions. This argument is more commonly made in markets characterized by rapidly-rising home values in which owners of unrestricted homes have realized significantly higher appreciation.

States can develop model programs or standardized guidelines to encourage shared equity homeownership in jurisdictions across the state. Each state needs to decide what level of standardization and the specific requirements for these programs, but even model guidelines – which provide direction, but do not specify program requirements – can go a long way in promoting programs that may work well in many localities.

States with Regulatory Barriers to Providing Subsidies for Affordable Homeownership

Three of the states reviewed – Michigan, Minnesota and Wisconsin – have “private improvement” clauses or provisions that prevent state-generated dollars from being used for private improvements and other “bricks and mortar” development. Michigan and Minnesota have created exemptions to this for privately owned affordable housing, so that, technically, state tax revenues can be used to develop affordable homes, including shared equity homes.

However, in Wisconsin, there is no such exemption. Therefore state funds cannot be used for the construction or rehabilitation of affordable housing. This is also why downpayment assistance is used so widely in Wisconsin – dollars can go toward housing subsidy, just not “bricks and mortar” development. This limits the applications of state funds for creating and preserving affordable homeownership units.

Remove tax barriers to local SEH programs

Because price-restricted shared equity homes are usually sold at lower prices than comparable homes without restrictions, taxing such a property at the unrestricted market value could undermine its affordability. Additionally, many shared equity and other housing advocates believe that taxing the property based on its unrestricted market value would be unfair to price-restricted homeowners because they are being taxed on property value that they cannot fully realize when selling the home.

States can require or at least allow price-restricted homes (like those in a CLT or deed-restricted housing program) to be assessed at a value that takes into consideration the price restrictions. State and local governments may be reluctant to enable this practice since it may reduce the potential future tax base for a jurisdiction. However, at the same many jurisdictions realize they must balance their goals of maintaining affordability for lower income homeowners, and adjust their property taxation policies and / or practices accordingly.

States with Legislation Requiring Special Assessments for Resale-Restricted Homes

There are several states that have specific legislation detailing the procedures used to assess price-restricted homes. Generally, these assessment procedures involve a conventional appraisal adjusted according to the restrictions on the home. For example, in North Carolina just recently passed a law (2009) requiring that assessors first appraise community land trust properties just as they would any market-rate property.[17] They must then reduce the valuation to the restricted price the land trust homeowner could get if they hypothetically sold the home at the time of appraisal.[18] Finally, they must subtract any silent second mortgage that the homeowner may have received.

For years, the state had been depending on the local assessors' discretion in assessing community land trust homes at their restricted values. However, in recent years the assessor in Orange County, North Carolina (Raleigh-Durham-Chapel Hill area) was appraising CLT homes at full value without consideration for restrictions. The CLT residents made repeated legal challenges to these practices and won almost every challenge. Therefore advocates pushed to get the recently passed legislation requiring that CLT home valuations be based on restrictions as standard practice. North Carolina has no similar formal assessment guidelines for other forms of shared equity homeownership, although advocates have recently made efforts to extend the same tax provisions afforded CLT homes to deed-restricted homes.

Some states use alternative assessment methods that do not take price restrictions into consideration, yet still offer a reduced assessment for shared equity homes. In Texas, under the Homestead Preservation Act, homes within community land trusts are exempt from all property taxes except the portion dedicated to the respective school district. This portion generally constitutes about two-thirds of property taxes, and in some cases this one-third reduction in property tax assessments may not accurately reflect an appraised value that would be adjusted for price restrictions. Therefore, the Texas legislature is currently considering new property tax legislation that would require CLT properties to be assessed at their restricted prices.[19]

Below is summary information on sample legislation, regulations or other legal doctrines that require special assessments for resale-restricted homes:

- *California* - The California Board of Equalization has developed guidelines for local tax assessors which clarify that a home's "fair market value" must reflect any restrictions imposed by local governments on the use of the property, including affordable housing resale price restrictions.[20]

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[17] House Bill 1586, General Assembly of North Carolina, 2009 session. More detail available at: http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=H1586

[18] According to House Bill 1586, in the case that the price restriction formula would allow a resale price that is higher than the initial appraised market value, then the market value would be used instead.

[19] Senate Bill 1205, Amendment to Chapter 373B Legislature of the State of Texas (introduced in 2009; current bill available at: http://www.legis.state.tx.us/search/DocViewer.aspx?K2DocKey=odbc%3a%2f%2fTLO%2fTLO.dbo.vwCurrBillDocs%2f81%2fR%2fS%2fB%2f01205%2f1%2fB%40TloCurrBillDocs&QueryText=&HighlightType=1).

[20] Letter to California county assessors from the State Board of Equalization, July 7, 1981.

- *New Jersey* – The 1989 New Jersey Supreme Court case *Prowitz v. Ridgefield* outlines tax treatment of price restricted homeownership units. The ruling requires the reduced assessment of price-restricted homes by stating "assessors must determine the value of both homes and common elements, making an appropriate adjustment for all easements either by reducing the assessment on the homes or common elements. "[21]

- *North Carolina* - In 2009, the General Assembly of North Carolina passed HB 1586, *An Act to Clarify the Valuation of Community Land Trust Property*.[22] This act limits the assessment of community land trust properties to their restricted price at the time of assessment. There is no similar legislation affecting the assessment of homes whose prices are restricted through deed covenants (e.g., inclusionary zoning homeownership units).

- *Wisconsin* - The Equity in Taxation Clause in the Wisconsin state constitution states that no property can be assessed any differently from other properties, but that other encumbrances should be taken into account (e.g. price-restriction covenants).[23]

- *Texas* - through the Home Preservation Act, all homes within a community land trust are exempt from all property taxes, with the exception of school district taxes, which comprise about two-thirds of property taxes. The Texas legislature is currently considering a new property tax bill that would require CLT properties to be assessed at their restricted prices (see above for more details).[24]

- *Florida* - The Community Renewal Act of 2009 specifies that CLTs are tax exempt and valuation of CLT property is based on the cost of the home, factoring in resale restrictions and all subsidies that have been applied.[25]

States without Special Tax Legislation Whose Jurisdictions Promote Special Assessments

Several states included in this review do not specifically require or enable localities to assess price-restricted homes differently than market-rate homes. However, since many of these states do not expressly prohibit these practices, assessors are generally free to employ them.

For example, Washington State has no formal law enabling reduced assessments for price-restricted affordable homes, but organizations that support affordable homeownership – such as A Regional Coalition for Housing (ARCH) in King County – have encouraged local assessors to employ this practice in

[21] Further details of the ruling are available at: http://galvinlawfirm.com/Galvin%20Web%20htm2_files/page0011.htm
[22] Complete statute language is available at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1586v3.pdf
[23] Wisconsin Constitution, Article VIII, Section 1. Full article language available at: http://my.execpc.com/~fedsoc/wi-con08.html; further information on history and amendments available at: http://www.legis.state.wi.us/lrb/pubs/consthi/02consthiII02.htm
[24] Senate Bill 1205, Amendment to Chapter 373B Legislature of the State of Texas (introduced in 2009; current bill available at: http://www.legis.state.tx.us/search/DocViewer.aspx?K2DocKey=odbc%3a%2f%2fTLO%2fTLO.dbo.vwCurrBillDocs%2f81%2fR%2fS%2fB%2f01205%2f1%2fB%40TloCurrBillDocs&QueryText=&HighlightType=1)
[25] More details on the Act can be found at: http://www.sjolandconsultants.com/News.html

many jurisdictions. Washington has had fairly widespread support from assessors in jurisdictions with price-restricted units, as have some other states.

In Illinois, there are no state mandated tax provisions for price-restricted homes. Special tax provisions, if any, are determined at the local level. In practice, some local tax assessors have in fact provided favorable tax provisions for CLT homes. For instance, Moraine Township, a northern suburb of Chicago, assesses community land trust properties at a level that reflects their resale-restricted value. The township also provides a clear rationale for the policy. Moraine's official assessment policy notes that affordable properties with resale control mechanisms are not comparable to market rate properties because of these restrictions. Therefore, the assessments of CLT homes are based upon the net sales price to the buyers.

In Vermont, state law requires that local assessment officials consider the reduced value of homes with resale restrictions when assessing them for tax purposes.[26] The Department of Taxes also issued a memorandum to assessors across the state in 2008 notifying them of this statute and further encouraging them to employ this practice.[27] Although the practice is not mandatory, several localities have considered the resale restrictions in valuing the home for assessments. The city of Burlington, for instance, provides reduced assessments for community land trust homes.

It is important to note that, in states without explicit legislation requiring the use of special assessments for price-restricted homes, these policies are decided on a jurisdiction-by-jurisdiction basis. Even if some assessors agree, others may not follow suit, creating a potential barrier for price-restricted, shared equity homes. State laws or provisions are likely the most effective way to ensure consistent and standardized assessment and taxation practices favorable to shared equity homes.

Ensure that State Bond funded mortgage programs can work with Shared Equity Homeownership

Below-market rate mortgages provided by state housing finance agencies (HFAs) have been a major source of financing for low- and moderate-income homeowners. These mortgages are usually funded with the proceeds from the sale of tax-exempt bonds, which generally allow state HFAs to offer interest rates a few percentage points below the going market interest rates.[28]

These state bond-funded mortgages are an important source of first mortgage financing for shared equity homeowners. HFAs in Delaware, Oregon, Rhode Island, Minnesota, Michigan, California, Connecticut, Colorado, Massachusetts, New York, Maryland, Washington State, among other states, have developed policies that allow them to finance buyers of price-restricted homes.

Any mortgage lender who finances a resale price-restricted home must develop policies and procedures to ensure that the lender's security interest and ability to foreclose on the property are not compromised by the community's affordable housing restrictions. The Federal Housing Administration (FHA) and Fannie Mae have both developed national guidelines designed to allow lenders to offer

[26] Title 32, Section 348(1).
[27] State of Vermont Department of Taxes, Memorandum to Boards of Listers, November 2008.
[28] Given the tax-exempt status of the bonds, investors are willing to accept a lower yield, in turn enabling the issuing municipality to offer a lower interest rate on the mortgages backing the bonds.

mortgages to buyers of homes with restrictions to protect lasting affordability. Like any other mortgage lending institution, state housing finance agencies must develop their own guidelines to facilitate access to their loan products for shared equity buyers.

State Bond-Funded Mortgage Programs with Special Regulations or Conditions for Shared Equity Homebuyers

In addition to the many states that allow HFAs to finance the purchase of price-restricted and other types of shared equity homebuyers, some states have mortgage products that are designed specifically for these buyers.

For example, in Vermont, the HOUSE (Homeownership Using Shared Equity) program, offered through the Vermont Housing Finance Agency (VHFA), is available for homebuyers who work with a non-profit housing organization and agree to share their home's appreciation with future buyers in exchange for purchase assistance. The non-profit organization and homebuyer agree to keep the property affordable for future homebuyers by sharing any profit when the home is sold. VHFA offers a special stepped interest rate for HOUSE borrowers that starts below the common below-market rate the agency offers. This results in significantly lower mortgage payments for the first few years of the mortgage.[29]

Washington's Housing Finance Commission (WHFC) has developed a version of its downpayment assistance program specifically for buyers of community land trust homes, called House Key Plus CLT, which is used in conjunction with the WHFC's first mortgage programs. A Regional Coalition for Housing (ARCH) in eastern King County administers another version of the WHFC program called House Key Plus ARCH, which is available to buyers of deed-restricted homes in that region.

Effect of Recent Recession on State Bond-Funded Mortgages

The recession that began in 2007 and the related credit crisis have led to reduced investor interest in mortgage revenue bonds, restricting the availability of state and local affordable mortgage products backed by these bonds. Because of this, shared equity homebuyers in many states have fewer options for first mortgage financing. If they can qualify for a conventional mortgage, they often have higher monthly payments than they would with a bond-funded mortgage. Those who are able to secure FHA mortgages may also have higher monthly mortgage payments, due the necessity of paying for mortgage insurance with these loans. It is often harder for share equity homeowners to access FHA-insured mortgages.

As economic conditions improve, most state bond-funded mortgage programs should be able to increase their funding capacity so that they are again able to be a dependable source of financing for

[29] VHFA discontinued the HOUSE program in 2008 as a result of declining bond investor interest. See the box *Effect of Recent Recession on State Bond-Funded Mortgages* for more details on such circumstances that have affected other housing finance agencies and bond-funded mortgages across the U.S.

shared equity homebuyers. The federal government has also provided support for these mortgage programs. The Administration recently initiated a program that will help HFAs generate funds to support their bond-funded mortgage programs. The Department of the Treasury will purchase several billion dollars in securities from Fannie Mae and Freddie Mac backed by mortgage revenue bonds issued by state HFAs. This initiative is expected to help revive state bond-funded mortgage programs and make affordable financing more available to low- and moderate-income homebuyers.

Build Long-Term Affordability into State Housing Programs

States can include requirements or preferences for long-term preservation of affordability into state homeownership support programs, including both subsidy programs (i.e., housing trust funds, downpayment assistance) and land use planning / zoning requirements (i.e., inclusionary zoning, fair share housing). This section provides a review of state-level programs in both of these categories that promote long-term affordable homeownership at varying levels.

At one end of the spectrum, some state programs explicitly require that affordability be maintained perpetually or at least over a certain period of time. Other state programs may provide specific guidelines, incentives and other ways to facilitate long-term affordability standards, but come up just short of mandating these standards. At the other end of the spectrum are programs that may not specifically promote or provide guidelines, but allow local governments they fund the freedom to implement long-term affordability restrictions.

No state programs in this review explicitly limit the length of affordable homeownership within their regulations. However, as described in other sections of this report, certain state provisions or laws (e.g., Texas' Alienation Clause) may limit enforcement of affordability restrictions that would otherwise be allowed by state programs.

Housing Subsidy Programs that Allow, Encourage or Require Long-Term Affordability

Many states have multiple types of programs that help bring the costs of homeowners down to an affordable level. The most common program types in the states included in this review are housing trust funds, downpayment assistance / second loan programs, and tax increment financing.

Some state programs included in this review do not fit in these common categories. Massachusetts' Community Preservation Act, for instance, enables localities to vote on whether to dedicate a certain amount of their property tax revenues to affordable housing. Connecticut's Land Bank & Land Trust Program provides funding specifically for community land trusts in the state.

A few states in this review have statutes that limit the use of tax-generated dollars for affordable housing. However, some of these states, like Minnesota and Michigan, have amended these statutes or created work-arounds so that available tax revenues can be used to produce and otherwise support affordable homeownership.

Many of these programs also function at the local level. Although it is important to allow localities to customize programs to meet their specific local needs, regulatory guidance from the state level can provide consistency in certain areas of these programs, particularly in the preservation of affordability and value of subsidy.

State Housing Trust Funds

Many states provide funds for affordable homeownership and rental housing through state housing trust funds with dedicated funding sources (such as Nevada, Delaware and Oregon) or appropriated tax revenues. The funds can provide financial support for affordable homeownership through several different mechanisms, most commonly by subsidizing the construction or rehabilitation of affordable homeownership units or through downpayment assistance programs.

The recent recession has greatly affected the dedicated funding streams of many state trust funds since these sources are often revenues generated from real estate transaction fees. The funding capacity of many state housing trust funds have been greatly reduced. For example, the state trust fund in Illinois has been depleted to the point where the state has currently ceased outlays. There are also some state trust funds that are currently frozen or have been "raided" to fund other government functions determined to be higher priorities at present – such is the case in Florida.

However, similar to state bond-funded mortgage programs, state HTFs should again become a significant potential source to fund shared equity homeownership once the economy recovers and their funding levels increase. Furthermore, several state HTFs still have relatively significant capacity due to alternative approaches to funding. So in many states, trust funds remain a viable source for supporting long-term affordable homeownership.

The following are illustrative descriptions of housing trust funds in Vermont and Connecticut.[30]

Vermont

In 1987, the Vermont legislature created the Vermont Housing and Conservation Trust Fund, funded with a statewide property transfer tax. The fund has since invested in the creation of over 8,700 affordable homes through programs like Homeland, which is a program that employs a shared equity mechanism. Homeland offers homebuyer subsidies of up to 20 percent of the home price or $40,000 for homebuyers earning less than the Area Median Income. In exchange for this assistance, Vermont requires that each assisted home be maintained as affordable housing in perpetuity. This is usually done through community land trusts, but may also be achieved through deed restrictions or limited equity cooperatives.[31]

Connecticut

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[30] For an up-to-date list of all state-wide housing trust funds, as well as many local housing trust funds, see Brooks, Mary E. (2007). *Housing Trust Fund Progress Report*. Frazier Park, CA: Center for Community Change Housing Trust Fund Project. Available for download at: http://www.communitychange.org/our-projects/htf/resources/copy_of_publications

[31] The Homeland program has been inactive since 2008 due to major state funding cuts. The state provided no Homeland grants in 2009 and does not anticipate providing grants 2010 as a result of a major reduction in the funding levels of the Vermont Housing and Conservation Trust Fund.

Connecticut's Housing Trust Fund supports affordable homeownership by providing loans and/or grants to eligible sponsors of housing affordable to low and moderate-income households. The funds are awarded as loans and / or grants, which are accessible to community land trusts and limited equity cooperatives

Homeownership Subsidy vs. Rental Subsidy – The Competition for Housing Trust Fund Dollars

Although most states are flexible in the use of their housing trust fund dollars, many tend to focus HTF subsidies on very low-income populations, particularly in support of affordable rental housing. Because of this, affordable homeownership often receives less consideration for HTF funding.

This was originally the case in Washington State. There was a competitive application process for state HTF funds that was structured as a single round with homeownership programs and rental programs all competing for the same subsidy pool. Given that the rental programs served lower income populations and required a greater amount of subsidy to serve these populations, these programs would outcompete the affordable homeownership programs for most of the funds.

Recently, however, homeownership and rental program applications for funding are now considered separately. The amount that will be allocated to each is determined beforehand, so homeownership programs get their own set-aside amount of funds. For the last few years, Washington State has set aside roughly 10 percent of its HTF funds each year for affordable homeownership, which is significantly more than these programs received under the single-round award process.

By dedicating a portion of their HTF funds for long-term affordable homeownership, states have an important source of state dollars that can potentially be used for shared equity homeownership. Some have argued that housing trust fund dollars should not be diverted away from long-term affordable rental housing, which is often the focus of trust fund expenditures. And it is true that when scarce housing funds are used for homeownership programs *without* lasting affordability controls, significantly fewer residents are able to benefit. However, when affordability is preserved, homeownership programs can offer public benefits that are comparable to affordable rental housing.

<u>Downpayment Assistance and Other Second Loan Programs</u>

Many states provide downpayment assistance to lower income homebuyers. These assistance programs are funded, in part, through housing trust funds or other sources in some states, but more commonly with federal HOME program funds allocated to the states.[32] Some states issue downpayment assistance loans directly to homebuyers while others allocate funds to localities who then lend directly to homebuyers. In the latter scenario, states usually give localities some flexibility in determining how the loans are repaid (if they ultimately require them to be repaid.

In many of the states in this review, downpayment assistance is issued as a second loan that is forgiven gradually over a specified time period. This practice dissuades eligible families from receiving instant

[32] In most cases, the federal government provides HOME funds allocated for a particular state directly to that state's local jurisdictions. The balance of the allocated funds are provided to the state, and are used for smaller communities that do not get their own direct HOME funding.

windfalls and flipping their homes to make a quick profit, but does not preserve the homeownership subsidy. Several other states recaptured the subsidy by requiring the second loan to be repaid upon resale of the home. These loans are usually "soft" or "silent" second mortgages that accrue no interest, require no monthly payments, and are paid off in full upon resale of the home. Some of these mortgages may accrue simple or compound interest, but usually at a fairly low, below-market rate. While this recapture approach preserves the subsidy, it does not preserve its buying power in the face of rising home prices.

Less commonly, some states recapture the subsidy plus a share of home price appreciation. Of the different downpayment assistance and second loan repayment methods, this is the most effective in terms of preserving affordable homeownership opportunities. The share of appreciation required to be paid on resale helps to increase loan amounts to future homebuyers to help them afford rising home prices.

Even within states, there is rarely one single method of downpayment assistance used. In Wisconsin, jurisdictions use their HOME funds for second loan / downpayment assistance programs that employ different repayment methods, mainly:

- A "forgivable loan" that basically transfers to a grant after a certain period of time, but is recaptured in full or in part up to the end of that time period
- Recapture (at resale) with no interest accrual
- Recapture with a low interest and an accrual limit (i.e., 3 percent simple interest capped at 50 percent of principal amount)

Two of the state's community land trusts – in the city of Madison and the four-county Coulee region in southwest Wisconsin – use a combination of downpayment assistance with one of the above repayment methods and a shared appreciation resale formula. Upon resale, the CLT homeowner repays the second loan – unless it is forgiven – and then receives 30 percent of any appreciation above the original appraised value of the home. Although Wisconsin jurisdictions have the flexibility to structure their downpayment assistance (DPA) / second loan programs in a variety of ways, the method must be determined before they apply for HOME funds.

Texas provides an example of using multiple loan repayment methods within a locality, including a shared appreciation loan. Although the use of shared equity mechanisms – like shared appreciation loans – are not specifically a feature of the state's funding programs for affordable homeownership, localities have the freedom to incorporate shared equity formulas into their homeownership subsidies.

Austin, Texas uses a two-tier system in its DPA program that is based on the amount of subsidy provided to a household. The system is designed as follows:

- For smaller homeownership subsidies – up to $10,000 per household – it provides a more traditional type second loan that is forgiven after a certain number of years
- For more substantial second loans – from $10,000 up to $40,000 – the city incorporates a shared appreciation formula. The household pays back the loan upon resale along with a share of home appreciation proportionate to the amount of subsidy and market value[33]

[33] http://www.ci.austin.tx.us/ahfc/downloads/dpa_faqs_updated_080709.pdf

For very small second loans, recapturing and recycling the loans may not be cost-effective, since there are increased administrative costs to recapturing and recycling these loans.[34] But for more substantial amounts, recapturing the subsidy – especially along with a share of home appreciation – and then using it to provide another low-to-moderate income family with assistance, is usually a more efficient use of government funds.

Tax Increment Financing

Almost all states (with the exception of Arizona) have the ability to create tax increment financing (TIF) districts. [35]These are designated areas, where development (usually including affordable housing or public improvements) is occurring, that dedicate or borrow against incremental increases in tax revenue over a certain period of time to initially fund this development. States have much latitude in determining requirements for TIF districts, such as the type of development TIF funds can support.

Some states specify that a certain minimum amount of any TIF funds must go toward affordable housing (e.g., California – see below); other states allow the creation of TIF districts that specifically fund affordable housing (e.g., Maine's "Affordable Housing Tax Increment Financing") Texas' Homestead Preservation Act (HPA) allows for the creation of a special tax increment financing district the specifically funds community land trusts. The HPA requires that at least 80 percent of the funds raised through such a TIF district go toward the purchase of property and construction / rehabilitation of housing and infrastructure associated with a CLT. Up to 20 percent of the funds from an HPA tax increment financing district can go toward administration of the respective CLT or general administration of the TIF district.[36]

Under California law, a certain amount of TIF funds must go toward affordable housing, although these requirements do not specifically target funding for affordable homeownership. Since 1979, redevelopment agencies have been required to set aside 20 percent of their TIF funds for low- and moderate-income housing. Additionally, agencies that extend projects beyond their original life are required to place 30 percent of their tax increment in this housing set-aside fund.

Although there is not a requirement in California that a certain portion of the set-aside funds must be used for development of long-term or permanent affordable homeownership units, all assisted housing counted towards an agency's housing production goals – including both rental and homeownership -- must have long-term affordability restrictions. Specifically, homeownership units must remain affordable for at least 45 years.[37]

Other Types of State Subsidy Programs that Allow or Require Long-Term Affordable Homeownership

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[34] There is no standard threshold amount of assistance for determining when it is more efficient to recapture and recycle second loans. There will likely be many factors for each jurisdiction to consider when making this determination, such as the respective availability of affordable homeownership units, size and administrative capacity of the downpayment / second loan program(s), and the amount of funds available to such programs.
[35] http://www.housingpolicy.org/toolbox/strategy/policies/tif.html
[36] Texas Local Government Code - Chapter 373A Homestead Preservation Districts and Reinvestment Zones (full statute available at: http://law.onecle.com/texas/local-government/chapter373A.html).
[37] Rioux, Gerald and Jacobus, Rick (2005). *CLT Financing in California Working Paper #2: California Redevelopment Law*. Institute for Community Economics. Available at: http://www.iceclt.org/resources_files/CLT%20Financing%20Guide%202%20Redevelopment.pdf

There are other state subsidy programs that support long-term affordable homeownership, but do not neatly fit into the categories above. Examples include the Massachusetts Community Preservation Act and two Connecticut programs – the Land Bank & Trust Program and the Affordable Housing Program.

Massachusetts

Under Massachusetts' Community Preservation Act, localities vote on whether to dedicate a portion of the local property tax, between one and three percent, to community development and preservation purposes. The three eligible purposes are affordable housing, land conservation and historic preservation. The tax dollars dedicated by the locality are matched by the state and contributed to the fund.

A jurisdiction can only use the funds set aside under the Community Preservation Act for housing serving 100 percent or less of area median income. Many localities use affordable homeownership units created under the Act to meet Chapter 40B requirements, which require serving 80 percent of area median income or lower for a minimum of 30 years. However, most jurisdictions tend to use perpetual affordability restrictions when meeting the requirement of the Chapter 40B program (see the Chapter 40B program description below).

Due to the economic downturn, the matching state monies have been steadily declining. Formerly, the state would provide a 100 percent match, but recently the match has been reduced to about 30 percent.

Connecticut

Connecticut's Land Bank & Land Trust Program, like the TIF districts created through Texas' HPA, provides a funding stream dedicated to shared equity homeownership – specifically community land trusts. The program is divided into one component that provides funding for land banks, and another component that provides funding for CLTs, specifically grants, loans and deferred loans for acquisition, holding and managing costs, but land must be developed right away. The land underlying the units must be held in trust.

The program is funded through a $100 million general obligation bond issued in 2005. The Connecticut legislature committed $20 million per year for 5 years.[38] The land must be leased to low- and moderate-income families, limited equity cooperatives or other nonprofit organizations. The landowner (CLT or other) has first option to purchase buildings / improvements in the event of a resale.

Connecticut's Affordable Housing Program (AHP), also known as "FLEX," provides grants, loans, loan guarantees, deferred loans or any combination of these for the development and preservation of affordable housing, including homeownership.[39] The program requires subsidy recapture provisions and affordability restrictions as a means to preserve affordability. AHP also provides funding to community land trusts and limited equity cooperatives.

[38] http://www.ct.gov/ecd/lib/ecd/HTF_Annual_Report-2006.pdf; http://www.ct.gov/ecd/cwp/view.asp?a=1095&Q=307632&PM=1#214d1; http://www.ct.gov/ecd/cwp/view.asp?a=3680&Q=433350&PM=1#Land

[39] http://www.ct.gov/ecd/cwp/view.asp?Q=253406&a=1098; http://www.ct.gov/ecd/cwp/view.asp?a=3680&q=433350&PM=1#AHP

States with Regulatory Barriers to Providing Subsidies for Affordable Homeownership

Three of the states reviewed – Michigan, Minnesota and Wisconsin – have “private improvement” clauses or provisions that prevent state-generated dollars from being used for private improvements and other “bricks and mortar” development. Michigan and Minnesota have created exemptions to this for privately owned affordable housing, so that, technically, state tax revenues can be used to develop affordable homes, including shared equity homes.

However, in Wisconsin, there is no such exemption. Therefore state funds cannot be used for the construction or rehabilitation of affordable housing. This is also why downpayment assistance is used so widely in Wisconsin – dollars can go toward housing subsidy, just not “bricks and mortar” development. This limits the applications of state funds for creating and preserving affordable homeownership units.

Include Affordability Preservation Requirements in Land Use / Inclusionary Zoning / Smart Growth / Planning Requirements or Incentives

Many states have land use or housing planning requirements that mandate or encourage the development of affordable housing, including long-term affordable homeownership. Some examples of these programs are fair share housing requirements, inclusionary zoning, density bonus programs and smart growth legislation.

These land use- / planning-based affordable homeownership programs are effective for two reasons in particular:

- They are mainly driven by private development activity, which during healthy housing market cycles can take affordable housing to a significant scale.
- At the same time, these programs usually do not require direct subsidy from state or local governments. Rather, they mainly employ non-monetary incentives and therefore are much less costly to state and local governments than direct subsidies.

Similar to the state homeownership subsidy programs above, these state programs may include a requirement that homeownership units created through such programs be preserved as affordable housing for the long term using deed restrictions, covenants or other price-restriction / shared equity mechanisms. Therefore they can be a highly effective, low-cost method for creating shared equity homeownership units.

The types of these land use / planning programs reviewed fall into three basic categories. Those employing:

- Inclusionary zoning / fair share housing requirements
- Smart growth requirements
- Planning requirements

Affordability Preservation in Inclusionary Zoning / Fair Share Housing Requirements

Inclusionary zoning and fair share housing programs usually mandate that a certain percentage of units within a development or within a jurisdiction must be made affordable and available to lower income families. These programs can also be designed to provide incentives rather than requirements. Density bonuses (see California's program below) are one such incentive-based program. Instead of mandating affordable units, density bonus programs allow the developer to increase the density of the project beyond land use / zoning allowances, increasing the potential income from the property.

Following are state examples illustrating both mandatory and incentive-based approaches to inclusionary zoning and fair share housing programs.

New Jersey

In response to the Mount Laurel court decisions, the New Jersey State Legislature passed the Fair Housing Act of 1985 creating the New Jersey Council on Affordable Housing (COAH).[40] COAH's purpose is to provide fair share low and moderate income housing through land use and zoning powers. Municipalities petition the COAH for certification of fair share plans. To provide a realistic opportunity for the construction of new units, cities may zone specific sites for residential development by the private sector. Developers must agree to build a fixed percentage of affordable units, usually 20 percent, of the total constructed on the site, for low and moderate income households, and to maintain affordability for at least 30 years.

Massachusetts

In 1969, Massachusetts passed 40B, the Comprehensive Permit Law which was a zoning program that encouraged the production of affordable housing in every city/town in the state. Under 40B, in any municipality where less than 10 percent of its housing qualifies as affordable under the law, a developer can build more densely than the municipal zoning laws would permit with more units per acre of land if at least 20-25 percent of the new units have affordable deed restrictions for 30 years or more. In practice, most jurisdictions do not "opt out" of the voluntary requirement to maintain perpetual affordability of these units. Affordable units created and/or preserved through CPA usually maintain perpetual affordability for households at 80 percent of local median income or lower to meet 40B requirements.[41]

Illinois

In 2003, the Affordable Housing Planning and Appeal Act was signed into law in Illinois. The Act requires all municipalities across the state with less than 10 percent affordable housing to develop and implement plans to ensure that at least 10 percent of their housing is affordable. In 2005, the law was strengthened by allowing communities to enter into intergovernmental agreements to produce affordable housing with other municipalities or counties with less than 25 percent affordable housing and within 10 miles of their corporate boundaries. Under the law, all Illinois communities can create community land trusts and housing trust funds, use local zoning powers to create affordable housing, and accept donations of money or land to address affordable housing needs.[42]

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[40] More details at: http://www.state.nj.us/dca/fha.htm
[41] Complete statute language available at: http://www.mass.gov/legis/laws/mgl/gl-40b-toc.htm
[42] More details at: http://www.bpichicago.org/StatePolicyInitiativesReducingBarriersL4AHPAA.php

California

California's state density bonus law (Government Code Section 65915) was created to offer a land use-based option to facilitate the economic feasibility of affordable housing development. The law requires all cities and counties to adopt density bonus ordinances. The law provides that local governments shall grant density bonuses of at least 25 percent, plus additional financial incentives to housing developers who agree to construct at least: 20 percent of the units affordable to lower income households, 10 percent of the units affordable to very low-income households, or senior citizen housing.[43]

Affordability Preservation in Smart Growth Requirements

Smart growth programs require that a certain portion of units in designated areas near transit, job centers and other amenities, like supermarkets, be affordable to lower income families. These programs often encourage greater density of development to promote more efficient and sustainable development. These programs can be vital in preserving affordability, because even in weaker housing markets, home values near transit and job centers are relatively high and more likely to increase in the future. Therefore it is especially important to ensure the affordability requirements of these programs are long-term or even permanent.

Long-term affordable homeownership programs with smart growth requirements in Massachusetts and Connecticut are highlighted below.

Massachusetts

In 2004, Massachusetts adopted smart growth legislation commonly known as 40R. Under 40R, the state provides a community between $10,000 and $600,000 in unrestricted funds up front, plus an additional $3,000 for every dwelling unit that gets built within locally designated smart growth districts. This approach provides an incentive to municipalities (rather than developers) to adopt smart growth planning and streamline the development permitting process.[44] Twenty percent of the housing in the district must be affordable to those earning 80 percent or less of the median income and be deed restricted for at least 30 years.[45]

Connecticut

In 2007 the state adopted Housing for Economic Growth Program, a smart growth strategy that incentivizes towns and cities to facilitate higher density affordable housing near transit. This program is in its infancy and we will not know for several years if it will produce housing. The program requires that at least 20 percent of housing within designated areas be affordable to households at or below 80 percent of area median income. The supported units must remain affordable for at least 30 years.

Affordability Preservation in Planning Requirements

Some states reviewed have programs that require local governments to assess their affordable housing needs and incorporate this into their housing planning documents and initiatives. Although such

[43] More details at: http://www.hcd.ca.gov/hpd/hrc/bonus.pdf
[44] More details at: http://www.practitionerresources.org/cache/documents/663/66311.doc
[45] More details at: http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-40R.html

programs may not specifically require long-term affordable homeownership, they encourage or even require jurisdictions to set goals for developing such affordable housing.

These state planning requirements can promote the development of local guidelines for developing and preserving shared equity homeownership units. For example, Rhode Island enables and encourages municipalities to create affordable housing programs that require long-term affordability. The sections below provide more details on Rhode Island's housing planning requirements as well as those of Oregon.

Rhode Island

In 2004, the Rhode Island General Assembly passed a bill that dealt with the obligations municipalities have to promote the development of low- and moderate-income housing.[46] Under this bill, most municipalities in the state are now required to include an Affordable Housing Plan as part of the housing element of its comprehensive plan. The Affordable Housing Plan must identify the affordable-housing needs in the community and identify goals and policies that will be adopted by the municipality to meet the identified needs.

The legislation gives municipalities authority to create local programs designed to encourage the development of low-and moderate-income housing, by using tools such as inclusionary zoning, increased density and other techniques. The required term for affordability and eligibility is 99 years or 30 years with renewals.

Oregon

Oregon has statewide guidelines[47] and a set of statutes[48] that require local comprehensive plans to address "housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. [49]

Support/Encourage Quality Administration of Local Shared Equity Homeownership Programs

State laws and regulations requiring long-term affordable homeownership are of little use if these requirements cannot be effectively enforced and the programs cannot be properly administered. States can ensure this by creating an infrastructure to support quality administration and oversight of local shared equity homeownership programs.

States can do this in a number of ways, including: specifying administrative requirements and guidelines for the monitoring / oversight process; and helping to increase program management capacity through

[46] Comprehensive Housing Production and Rehabilitation Act of 2004. More details at: http://www.hrc.ri.gov/documents/document_library/HRC%20FY%202008%20Annual%20Report.pdf
[47] Goal 10 of Oregon's Statewide Planning Goals and Guidelines (Ore. Admin. Rules 660-015-0000 [10] - http://www.oregon.gov/LCD/docs/goals/goal10.pdf)
[48] Ore. Rev. Stat. 197.295 et seq.197.303, 197.307 (http://www.leg.state.or.us/95reg/measures/hb2700.dir/hb2709.en.html)
[49] http://www.lincolninst.edu/pubs/Smart-Growth-Policies-Ch-6-Affordable-Housing.pdf

funding and technical assistance. Below are illustrative state examples of these different methods of supporting quality administration of local shared equity homeownership programs.

Define Administrative Requirements / Program Monitoring Process

The ability of shared equity models to preserve affordability and public subsidy significant scale depends on the success of these programs in meeting the challenge of ongoing monitoring and administration. Shared equity homeownership programs require active stewardship to ensure that affordable homes remain affordable for future generations.

Although some local governments and organizations may already effectively administer their programs and monitor their respective units and homeowners, states can aid in the process by offering administrative guidance. Especially in the case where state resources are being used to support long-term affordable homeownership through shared equity mechanisms, it is helpful for states to provide clear requirements for monitoring.

Following are examples of states that have made notable efforts in clearly defining requirements for the administrative and monitoring processes of shared equity programs.

New Jersey

The State of New Jersey requires all jurisdictions to ensure that affordable housing units are created along with new market rate housing. The state has created Uniform Housing Affordability Controls to ensure that these units are kept affordable for at least 30 years.[50]

The state requires each jurisdiction to designate an Affordable Housing Administrator and provides a standard job description for the position which can be either a local government employee or an outside contractor. By standardizing the terms of restrictions and the position requirements, New Jersey has made it easier to coordinate training and support for local administrators and ensure that programs are well run.

Massachusetts

In Massachusetts, state agencies actually participate in the monitoring process for certain long-term affordable homeownership programs where they are providing direct subsidy or directly administering the program. For instance, the Department of Housing Community Development normally oversees projects developed under Chapter 40B regulations. The state will also work with third party organizations with a statewide focus, like the Citizen's Housing and Planning Association (CHAPA) to monitor certain local programs it has supported, particularly when the locality itself does not have the capacity to oversee the programs.

Minnesota

[50] More details at: http://www.state.nj.us/dca/affiliates/coah/regulations/uhac.html

The state does not have any formal certification role for local or regional administrators. However, there is a de facto certification process if administrators want to compete for the Minnesota Housing Finance Agency's funds. Certain requirements have to be met, which the Agency monitors through an annual audit. For the audit, the staff visits approximately 10 percent of the administrators that receive MHFA funding to conduct a review of their processes and ensure that the proper rules and regulations are being followed.

Help Increase Program Management Capacity

Improved capacity for monitoring and supporting shared equity homeownership programs may be a key to promoting and increasing the scale of this tool. Sound administrative planning, solid technical expertise, and sufficient financial and staff resources are integral to increasing and sustaining management capacity to ensure proper stewardship of these programs over the long-term.

Some of the states in this review have made specific efforts to increase the management capacity of shared equity homeownership programs by consolidating management and stewardship functions within one entity. Delaware, for instance, created a statewide community land trust. The Diamond State CLT acts as Delaware's sole steward, providing oversight to all resale-restricted land trust homes across the state.

Other states have sought to increase local management capacity through financial and technical assistance. In 2007, the state of Washington appropriated $200,000 for capacity building among community land trusts. The Minnesota Housing Finance Agency (MHFA) provides training and technical assistance to local and regional administrators, with funds in its budget item dedicated to these activities. MHFA partners with several third-party consultants and other organizations to extend these services to a multitude of localities, particularly small localities with little operational and oversight capacity.

Programs that are responsible for more units may not only be more cost effective but may also be better managed. Dedicated staff, focused exclusively on the stewardship of shared equity homeownership programs are better able to build the systems necessary to balance the needs of homeowners against the broader community interest. Communities with fewer than 200-400 units should consider banding together or contracting with an independent stewardship entity. This can be done without greatly diminishing direct accountability to the local community.

Conclusion: The State Role in Promoting and Encouraging Greater Use of Shared Equity Homeownership Programs

While a large part of the financial support for shared equity homeownership comes from the federal level, states tend to play a larger role in promoting and supporting this long-term affordable homeownership tool within their localities. Although individual jurisdictions within a state may create and implement successful programs that can serve as examples for other jurisdictions, this alone is unlikely to be as effective as a state-level effort to cultivate shared equity mechanisms.

In addition to the various legal and regulatory actions recommended above, states can also promote and encourage shared equity homeownership through education and outreach. This can increase an awareness and understanding of shared equity homeownership among policy makers and stakeholders within the housing and community development industries, as well as various related industries.

States can provide information and outreach to local governments and communities in a number of ways. These include research reports, newsletters, and other of educational vehicles. Additionally, states can organize workshops, conferences or otherwise present information and examples of how shared equity programs may serve to preserve housing affordability and housing subsidies for the long term.

Several states reviewed in this report have used some of these educational and promotional methods:

- *Delaware* – The Delaware State Housing Authority produced a report on shared equity homeownership, outlining the benefits and providing examples of successful programs around the country. The department distributed the report to local housing agencies and offered assistance in establishing shared equity programs.[51]

- *Washington State* – In 2006, the Washington State Housing Finance Commission released a report of the expanding use of community land trusts in the state. The report features several of the state's land trusts and examples actual resales that have occurred in some of these land trusts. In addition, it provides a brief profile of other recently initiated land trusts across the country, including examples in Illinois, Florida, Delaware and California.[52]

- *Minnesota* – As part of the 2009 Legislative Session, the Minnesota State Legislature directed the state's Department of Human Services to consult with the Minnesota Housing Finance Agency ("Minnesota Housing") and other related parties regarding its Housing Options Study. The study is exploring ways to maximize the availability of affordable housing choices for populations in need of assistance, such as persons with disabilities. The state legislature recommended considering, among other options, "cooperatives, land trusts or other limited equity models."[53]

- *North Carolina* - The North Carolina Housing Coalition, a state-level affordable housing advocate and technical assistance provider, promotes shared equity homeownership across the state. The Coalition educates localities on tools for long-term affordable homeownership and helps to build local coalitions in support of these tools.

In addition, states can undertake efforts to measure and demonstrate the social and economic impacts of established shared equity homeownership programs among their jurisdictions. This is often vital in educating policymakers on the benefits of shared equity homeownership and providing a clear rationale for its expanded use.

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[51] The report is available at: http://www.destatehousing.com/services/servicesmedia/tb_shared_equity.pdf
[52] The report is available at: http://www.burlingtonassociates.net/resources/archives/CLTsComeOfAge.pdf
[53] Minnesota Housing Finance Agency (2009). *Legislative Summary 2009*. Available at: http://www.mnhousing.gov/idc/groups/secure/documents/admin/mhfa_008262.pdf. NOTE: "Limited equity" is a term that is often used synonymously with "shared equity."

Such efforts can also help to realign existing affordable homeownership programs at the state and local levels, so that these programs strike a more sustainable balance between preservation of affordability, preservation of public subsidy, and greater economic opportunity for low- and moderate-income homeowners.

As an alternative form of housing tenure between renting and traditional homeownership, states can incorporate shared equity mechanisms at a greater scale to expand long-term affordable homeownership opportunities. Well-designed and managed shared equity homeownership programs can offer both greater economic security and wealth-building opportunities for lower income households. These programs also can provide a more sustainable and efficient way to preserve both affordability and the value of subsidies.

States can play an integral role in supporting the greater use of shared equity homeownership. By creating a supportive legal and regulatory environment, and by directing more resources toward shared equity programs, they can effectively promote, expand and sustain this important affordable housing tool.

Appendix

Working Overview of State-Level Shared Equity Homeownership Policies

The author has prepared a matrix (available at: http://www.nhc.org/APPENDIX_SEH_State_Policy_Matrix.xls) that provides an overview of information gleaned from research on 20 states for this report. [54] The information is broken down into five major policy categories / goals:

1) Build long-term affordability into state housing programs
2) Remove barriers to local implementation of shared equity homeownership programs
3) Promote and encourage shared equity homeownership programs
4) Support / encourage quality administration of local shared equity homeownership programs

These categories represent the general grouping of questions for interviews conducted with state and local housing officials, policymakers, advocates and other housing practitioners. The individual rows under the categorical headings basically represent some of the actual questions asked during the interviews. Overall, the matrix also represents the general format of the above report, which explores some of the listed policy examples in greater detail.

It is important to note that **although this matrix represents a summary of the information gathered for this review, <u>it is by no means exhaustive</u>**. This matrix is a work in progress rather than a final summation of all state-level policies related to shared equity homeownership.

The author and sponsors encourage readers who have any information that can be used to update, fill gaps in or correct sections of the matrix to contact the author, Ryan Sherriff, at rsherriff@nhc.org.

[54] As mentioned in the introduction, 22 states were researched for this report. However, due to lack of information, two of these states were omitted from the matrix.