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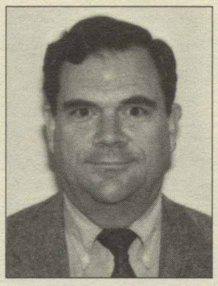

Kirkpatrick

Affordable homeownership for the poor has been accomplished through five different structures: (1) single-family, fee simple ownership, (2) condominiums, (3) community land trusts, (4) cooperatives, and (5) mutual housing associations. Each emphasizes different goals of affordable housing. Fee simple and condominium ownership stress the pride that comes with individual ownership. Land trusts stress long-term affordability. Cooperatives and mutual housing associations appeal to those who want to use housing to create commitment and a sense of community.

This article will clarify how cooperatives and mutual housing associations are both similar and different from the other ownership structures, and how they preserve affordability. Space does not allow for a detailed discussion of the legal issues that arise in developing a cooperative or mutual housing association. For such a discussion, see Rohan & Reskin, *Cooperative Housing Law and Practice* (Vols. 2, 2A, and 2B of Matthew Bender, *Real Estate Transactions*), and Kirkpatrick, *Legal Issues in the Development of Housing Cooperatives* (National Economic Development and Law Center, 1981).

Ownership Structures

Limited Equity Cooperative. In a cooperative, unlike a condominium, a resident does not own a dwelling unit. The resident owns shares or a membership in the corporation, usually a nonprofit organization, which owns the land and buildings. The resident has a right of exclusive occupancy in a particular dwelling unit, secured by an occupancy agreement or a proprietary lease. Depending on the jurisdiction, cooperatives and condominiums may be treated slightly differently for securities and tax purposes, but in most cases they are similar. Section 216 of the Internal Revenue Code (IRC) usually allows cooperative members the interest and property tax deductions that condominium owners would receive.

On a practical level, condominium homeowners can be financially independent of the other owners of their condominium, while members of a cooperative have to work jointly with the other members in the management of their finances. If a cooperative defaults on its loans, even those members who are current in their payments may lose their interests if the organization as a whole defaults on its debt. Subordination and nondisturbance agreements could protect nondefaulting members, but are usually unacceptable to the few sources that will finance cooperatives. Instead, cooperatives establish vacancy, operating, and replacement reserves as the principal protection against foreclosure and loss of membership interests.

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The cooperative's extra financial risk would make it unattractive except for one fact: low-income families do not have the personal reserves to pay for necessary repairs and short-term cash flow needs. The cooperative, unlike the condominium and fee simple ownership, pools the resources of many members.

Limited equity cooperatives assure continued affordability by limiting the transfer price of the membership interests through provisions in the articles, bylaws, and any covenants, conditions, and restrictions (CC&Rs) that are filed with the property. Grant deed restrictions and loan regulatory agreements are also used. See Kirkpatrick, "Limiting the Equity in Housing Cooperatives: Choices and Tradeoffs," *Economic Development and Law Center Report*, Vol XI, No. 1 (1981), for a discussion of each of the methods of enforcing equity limits and the possible shortcomings of each. Resale restrictions are also discussed in another article in this issue.

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Cooperative members typically are allowed to recover their original downpayment, increased by a pre-agreed formula. This formula is often a flat percentage increase, usually in the neighborhood of 6 percent, or an increase based on a cost of living or income index. Members may also receive compensation for the current value of capital improvements approved by the board but paid for by the member. Similar equity restrictions are used in the other legal structures, and are not unique to cooperatives. The equity limitation formula usually reflects how each project balances the interests of individual members against those of future low-income residents, in an effort to assure long-term or even permanent affordability. The structures differ only in their legal mechanics of enforcement.

Leasing Cooperative. Because the low-income housing tax credit, which currently is the single most important source of subsidy funds, requires that ownership be in a partnership, most housing cooperatives developed in the last few years are leasing or leasehold cooperatives. Such cooperatives lease from the limited partnership and may have an option to purchase the property when the limited partnership sells, usually at the end of fifteen to twenty years. The cooperative might also be a general partner, although it usually is not organized well enough at the time of the formation of the partnership to play that role. Although the leasing cooperative is limited to a leasehold interest in the property, the transfer value of the membership interest, which is strictly limited under any of these structures, is likely to be the same. Members of a leasing cooperative will not qualify for any interest and property tax deductions under IRC § 216. In some states, however, they may have a better chance for a reduction or elimination of the local property tax than would either a cooperative or a condominium.

The leasing cooperative is different from a cooperative that receives a ground lease from a community land trust in that it would not own the improvements, but it would be similar in that it could use most of the affordability enforcement mechanisms possible in a land trust.

Mutual Housing Association (MHA). The mutual housing associations of Northern Europe own many cooperatively run buildings, often spread over most of the major cities of their countries. Their membership includes not only the residents, but also prospective residents. In effect the MHA is a cooperative of individual cooperatives, but also much more. It not only owns housing, but builds it, finances it, and often provides other related services. See *The Mutual Housing Association: An American Demonstration of a Proven European Concept* (Neighborhood Reinvestment Corporation, 1985).

As the term is used in this country, an MHA is less ambitious than its European counterpart. It usually involves multiple buildings, operated cooperatively, and a membership base that is more than just current residents. Most typically the membership includes those interested in expanding the number of units of affordable housing owned by the organization. The Neighborhood Reinvestment Corporation has sponsored mutual housing associations in at least eight cities, building on its original model in Baltimore. Cooperative Services, Inc., based in Oak Park, Michigan, and the Madison Mutual Housing Association, in Madison, Wisconsin, are other examples.

The mutual housing association is usually a charitable, tax-exempt nonprofit corporation. As a result, it often has an easier time obtaining financing, may in some jurisdictions be eligible for property tax exemption or reduction, and may have fewer securities and tax hurdles to navigate than condominiums and cooperatives. Like the leasing cooperative, the member's transfer value is likely to be the same as under the other structures, but the members will not be eligible for the passthrough of interest and property tax deductions available to condominium and cooperative owners.

Alternative Choices

Although they often cite legal issues, advocates for cooperative housing usually base their preference on less tangible factors. Cooperatives provide a sense of community normally absent in condominium or single-family ownership structures. Successful cooperatives can tell of having eliminated gang activity or drug problems that are common in the surrounding neighborhood as members work together in managing their community. Other cooperatives have developed classes and support structures for long-term unemployed individuals to help them return to school and increase their skills or to get them back to work. Frequently, cooperatives develop recreational facilities, community rooms, and activities carried out at those facilities that can be of benefit not only to members but to the broader community.

A land trust can be combined with any of the other structures, although it is not likely to be used with a mutual housing association. Where a land trust is used as a mechanism to preserve affordability, the limited equity cooperative may be the preferred structure for owning the improvements. Land trusts are useful when there may be doubts about the future enforceability of the equity limitations in the cooperative. Under some circumstances, cooperative members may be able to collude to remove at least some of the equity limitations that a separate land trust board would be able to enforce. See Kirkpatrick, "Limiting the Equity in Housing Cooperatives: Choices and Tradeoffs," *Economic Development and Law Center Report*, Vol. XI, No. 1 (1981).

Land trusts that use structures other than a cooperative may also have the advantage that residents own something tangible, the improvements. Many people feel that ownership of a membership in either a cooperative or a mutual housing association does not convey the same sense of pride as outright title to a unit in a condominium or single-family home. Others would argue that the sense of pride comes more from how the project is run than from its legal structure, and that the sense of community in a cooperative is more important than pride of individual ownership.

Where the land trust structure seems unnecessary or burdensome, the cooperative structure may be the best way to achieve a sense of ownership and community. Where enforcement of equity limitations is an issue for an individual cooperative, the mutual housing association also may be a reasonable alternative. In fact, the MHA can be viewed as a land trust and the residents, all in one corporation.

The MHA offers a less clear sense of individual ownership than the cooperative and the condominium because of the involvement of members other than residents, but it addresses a number of difficulties faced by limited equity cooperatives. The MHA, because it looks more like a rental project, usually has an easier time than a cooperative in obtaining financing and getting past securities and other regulatory barriers. To maintain their sense of community, cooperative boards and members need continuing training and support, which is more easily provided through a larger organization like an MHA or a land trust. Where a mutual housing association is preferred for that support to a land trust, it may be because the MHA includes residents with, but not dominated by, experienced technical assistance people. Peer support and counseling from residents of other buildings in an MHA, as well as the professional technical assistance stressed by the land trust, may for the long term prove more likely to yield the results that are sought in a cooperative.

Where enforcement of equity limitations is an issue for a cooperative, an MHA may be a reasonable alternative.

Summary

In summary, the condominium provides the clearest form of traditional homeownership but usually cannot obtain the subsidies necessary for affordability and does not provide the mutual support some low-income families feel they need. The cooperative provides a sense of community, but with a less traditional form of ownership. The leasing cooperative and the mutual housing association address financing and technical assistance problems that cooperatives traditionally face, but may have even greater difficulties making ownership seem real. The land trust is a versatile vehicle for assuring long-term affordability that can be used to support the other structures. □