

2024

Shared Housing as a Missing Middle Solution for Rural Communities

Alison Lintal

Penn State Dickinson Law

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Alison Lintal, *Shared Housing as a Missing Middle Solution for Rural Communities*, 102 Neb. L. Rev. 615 (2023)

Available at: <https://digitalcommons.unl.edu/nlr/vol102/iss3/5>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Alison Lintal*

Shared Housing as a Missing Middle Solution for Rural Communities

ABSTRACT

There is mounting pressure on municipalities to reform their zoning ordinances to eliminate “exclusive” single-family zoning. Advocates call for the inclusion of more multi-family housing within what have been exclusively single (white nuclear) family spaces.¹ In particular, there is a need for “missing middle housing” which is a range of smaller multi-unit or duplex housing that is similar in scale to single-family homes.² Twenty-eight percent of single-family homes are occupied by one person³ and generationally, Baby Boomers make up the largest portion of

© Copyright held by the NEBRASKA LAW REVIEW. If you would like to submit a response to this Comment in the Nebraska Law Review Bulletin, contact our Online Editor at lawrev@unl.edu.

* Visiting Assistant Professor of Law and Director of the Externship Program, Penn State Dickinson Law. Professor Lintal previously practiced as an Honors Attorney with the U.S. Department of Housing and Urban Development in Chicago. Many thanks for Professor Emeritus Tim Iglesias for his helpful comments and feedback on this article. With gratitude to Rachel James for her editing and research work and to Emily Ameel, Daniel Levensgood, Millie Krnjaja, and Noel Ansah for their research assistance.

1. See Margaret Barthel & Jennifer Ludden, *The U.S. needs more affordable housing—where to put it is a bigger battle*, NPR (Feb. 11, 2023, 5:00 AM), <https://www.npr.org/2023/02/11/1155094278/states-cities-end-single-family-zoning-housing-affordable> [<https://perma.cc/4XE8-KFSE>]; see also James A. Kushner, *The Reagan Urban Policy: Centrifugal Force in the Empire*, 2 UCLA J. ENVTL. L. & POL’Y 209, 241 (1982) (arguing that conversion of unused suburban single-family properties to multi-family use would allow for economic and social support through shared living). See generally ANTHONY FLINT, *THE STATE OF LOCAL ZONING: REFORMING A CENTURY-OLD APPROACH TO LAND USE* 28–29 (2023), <https://www.lincolnst.edu/sites/default/files/pubfiles/state-of-local-zoning-lla230105.pdf> [<https://perma.cc/V4AR-S8RS>].
2. *Missing Middle Housing*, missingmiddlehousing.com (last visited June 2, 2023).
3. ECON. & HOUS. RSCH GRP, FREDDIE MAC, *THE GROWTH OF SOLE-PERSON HOUSEHOLDS: CREATING EVEN MORE DEMAND FOR SMALLER, MORE AFFORDABLE HOMES* (2021), https://www.freddiemac.com/fmac-resources/research/pdf/202108-note-sole_person_households.pdf [<https://perma.cc/4LUF-FG5A>] [hereinafter *THE GROWTH OF SOLE-PERSON HOUSEHOLDS*]

sole-person households.⁴ Deteriorating housing stock, high development costs, and lack of affordable options continues to hamper affordable housing access in rural communities.

What should affordable “multi-household” housing look like in rural communities? This Article proposes that government can infill rural single-family housing stock through local regulation modernization, government sponsored and private-sector programs, and policy incentives to promote shared housing. Such shared housing would be a significant part of the solution for meeting the affordable housing needs for single seniors in rural communities who desire to age in place. This Article demonstrates that shared housing, particularly among seniors, can be a successful model for providing affordable housing in rural areas. It will identify and examine the legal impediments to implementing shared housing programs which include: (1) failure to meet building code and internal density requirements; (2) antiquated definitions of family and cohabitation under zoning laws with a need for statutory permission for unrelated people desiring to live together; (3) restrictive occupancy codes; (4) property and income tax consequences as well as impact on public benefits eligibility; (5) lack of traditional landlord tenant protections for informal shared housing arrangements; and (6) limited fair housing protections for shared housing arrangements. In addition, funding and financing shared housing under current conventional and government financing structures presents challenges. Despite these legal impediments and financing challenges, shared housing presents a worthwhile endeavor because benefits include addressing an important affordable housing problem, fostering social and intergenerational exchange, and the potential for enhanced health outcomes such as aging in place and decreased social isolation. In order to achieve these important benefits, this Article proposes regulatory and policy reforms to help alleviate barriers to the implementation of shared housing.

TABLE OF CONTENTS

I. Introduction	617
II. The Rural Affordable Housing Crisis	619
A. Growth of the Aging Population	620
B. Growing Diversity of Rural Communities	621
C. Available Stock and Demand	622
D. Challenges to Development in Rural Communities	624

4. U.S. CENSUS BUREAU, THE RISE OF LIVING ALONE, fig. HH-4 <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-4.pdf> (last visited Aug. 22, 2023). Analysis from Freddie Mac suggests that by 2030 there will be 5 million more sole-person households. See THE GROWTH OF SOLE-PERSON HOUSEHOLDS, *supra* note 3.

2024]	SHARED HOUSING	617
III.	What is Shared Housing?	627
	A. Types of Shared Housing	627
	B. Growth and Success of Shared Housing.	629
IV.	Benefits of Shared Housing in Rural Areas for Seniors . . .	632
V.	Legal Impediments to Implementing Shared Housing . . .	635
	A. Failure to Meet Building Code Requirements and Internal Density Regulations	636
	B. Antiquated Definitions of Family and Cohabitation under Zoning Laws	639
	C. Restrictive Occupancy Codes	643
	D. Impact on Taxes & Benefits Eligibility.	645
	E. Landlord-Tenant Protections	647
	F. Limited Fair Housing Protections	649
VI.	Lack of Financing & Funding Options	652
VII.	Regulatory Reform and Policy Changes	655
	A. Land Use Regulation Modernization	656
	B. Policy Incentives, Financing, and Government Funding	658
	C. Community Education, Partnership & Socialization . . .	661
VIII.	Conclusion	663

I. INTRODUCTION

Homeownership has long been valued as the symbol of the American Dream. In addition to serving as the largest generational wealth creation opportunity for most Americans,⁵ it also celebrates individual autonomy, privacy, choice, and freedom of association. This vision of homeownership for all is a fairly modern construction, encouraged by public policies such as zoning regulations and subsidies for single-family home development through federal housing finance programs. Significant portions of the population face barriers to homeownership as a result of systemic racism.⁶ As discussed below, it is more common for non-white households to value and adopt shared living arrangements.⁷ This could be due to cultural preference or a result of having less access to the wealth that single-family homeownership provides.

5. See Jenny Schuetz, *Rethinking homeownership incentives to improve household financial security and shrink the racial wealth gap*, BROOKINGS (Dec. 9, 2020), <https://www.brookings.edu/research/rethinking-homeownership-incentives-to-improve-household-financial-security-and-shrink-the-racial-wealth-gap/> [https://perma.cc/WP57-QPR3] (“For households in the three middle-income quintiles, home equity is the largest single financial asset, representing between 50% and 70% of net wealth.”).

6. *Id.*

7. See discussion *infra* Parts II.B., V.C.

This Article highlights how the societal attachment to the myth of the single-family home⁸ has closed policy-makers' eyes to shared housing arrangements which serve a large population but do not conform to traditional nuclear family households.⁹ In particular, this attachment has created institutional and cultural barriers to home-sharing by unrelated individuals in the United States. In light of the lack of available affordable rental units, promoting shared housing as an affordable housing option for seniors, particularly in rural communities where stock and development options are limited, is one way to house people without a significant expenditure on resources. However, under arcane zoning and land use regulations, home sharing among unrelated household members is often prohibited or limited.¹⁰

Home-sharing reimagines unused space. Home-sharing is distinct from the literature on the sharing economy due to its focus on being a longer-term or transitional solution rather than a short-term Airbnb-type rental option typically targeted towards higher income groups.¹¹ This Article examines whether shared housing could provide an affordable rental option to meet the housing needs of an aging and diversifying rural population. Current single-family housing stock is underutilized.¹² There is a mismatch between how existing homes are used and the unmet affordable housing demands of single seniors. Changes to federal policies and state and local laws could enable home sharing as one option for meeting existing and expected demands in

-
8. See generally Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093 (2009); see also Stephanie M. Stern, *Reassessing the Citizen Virtues of Homeownership*, 100 COLUM. L. REV. 101 (2011) (challenging the assumption that homeowners are more civically and politically engaged citizens than non-homeowners).
 9. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING 49 (George Hemmens et al. eds. 1996). (“The widespread belief that promotes the singular, cultural ideal of the single-family home as the material manifestation of American rugged individualism and self-reliance denies our country’s traditions and history of interdependent connections between extended families, neighbors and communities.”) [hereinafter UNDER ONE ROOF].
 10. Michael Waters, *Where Living With Friends Is Still Technically Illegal*, THE ATLANTIC (May 23, 2023, 4:15 PM), <https://www.theatlantic.com/family/archive/2023/05/zoning-laws-nuclear-modern-family-definition/674117/#> [<https://perma.cc/DWX4-KP2G>].
 11. Tristan P. Espinosa, *The Cost of Sharing and the Common Law: How to Address the Negative Externalities of Home-Sharing*, 19 CHAP. L. REV. 597–98 (2016).
 12. See Steve Adcock, *This study suggests that you’re wasting a ton of home space*, LADDERS (Nov. 15, 2019) <https://www.theladders.com/career-advice/this-study-suggests-that-youre-wasting-a-ton-of-home-space> [<https://perma.cc/AJQ9-ZBSY>]. Single-Family Homes comprise 61.6 percent of total housing units and contain a median of 5.5 rooms. See U.S. CENSUS BUREAU, LATEST ACS 5-YEAR ESTIMATES (2021), <https://www.census.gov/acs/www/about/why-we-ask-each-question/rooms/> [<https://perma.cc/RZ24-H7EN>]. Yet almost one-third of single-family homes are occupied by only one person. See THE GROWTH OF SOLE-PERSON HOUSEHOLDS, *supra* note 3, at 1.

the housing market. For example, shared housing is a proven method of serving single seniors in urban areas in California.¹³ It could also serve as a useful solution for creating “multiple household” housing in wealthy single-family communities. However, for these benefits to be realized, substantial legal and policy obstacles need to be addressed.

II. THE RURAL AFFORDABLE HOUSING CRISIS

The shortage of affordable housing stock in the U.S. is well-documented.¹⁴ Affordable housing stock is declining, and this trend is particularly acute in rural communities.¹⁵ “Throughout [Pennsylvania], increases in both single person households and households with older members are exacerbating the housing shortage.”¹⁶ According to 2020 census data, states in the Northeast have the largest percentage of older residents,¹⁷ with Pennsylvania both representative for its aging population and rural communities.¹⁸ In 2020, fourteen percent of the U.S. population or 46 million people lived in rural communities.¹⁹

-
13. See DAVID C. PRITCHARD & JOELLE PERKOCHA, SHARED HOUSING IN CALIFORNIA: A REGIONAL PERSPECTIVE, SHARED HOUS. FOR THE ELDERLY 63 (Dale J. Jaffe ed., 1989).
 14. See NAT'L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES (2023); See also CTR. ON BUDGET & POL'Y PRIORITIES, PRICED OUT: THE STATE OF HOUSING IN AMERICA (2022) (arguing that affordable housing shortages could be addressed through increased development efforts and providing rental subsidy specifically to renters making 30% of the area median income) Diana Ionescu, *The Quiet Housing Crisis in Rural America*, PLANETIZEN (March 20, 2023, 8:00 AM), <https://www.planetizen.com/news/2023/03/122189-quiet-housing-crisis-rural-america> [<https://perma.cc/V2ZG-LHFU>] (discussing factors surrounding the escalating housing crisis in rural areas in recent years).
 15. There is a shortage of affordable housing in all Pennsylvania rural counties. Extremely low-income renter households are affected the most by this shortage. See RAJEN MOOKERJEE ET AL., THE CTR. FOR RURAL PA., AFFORDABLE HOUSING IN RURAL PENNSYLVANIA 4 (2006), https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/191/Affordable_Housing06.pdf [<https://perma.cc/EP4G-8JK7>].
 16. *Id.*
 17. ZOE CAPLAN & MEGAN RABE, U.S. CENSUS BUREAU, THE OLDER POPULATION: 2020, at 12 (2023), <https://www2.census.gov/library/publications/decennial/2020/census-briefs/c2020br-07.pdf> [<https://perma.cc/N7PP-XQQ5>].
 18. The term rural can have varied definitions depending upon the context. For instance, the 2002 Farm Bill defines rural by what it is not – “any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) [the] urbanized area contiguous and adjacent to such a city or town.” Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 6020, 116 Stat. 134, 363 (2002) (codified as amended at U.S.C. § 1991(a)(13)(A)). The Center for Rural Pennsylvania defines rural communities based upon population density of less than 291 people per square mile. According to the Center’s definition, 48 of Pennsylvania’s 61 counties are considered rural or 26% of the state’s population. See *Rural Urban Definitions*, CTR. FOR RURAL PA, <https://www.rural.pa.gov/data/rural-urban-definitions> [<https://perma.cc/6FHD-WTKQ>] (last visited Mar. 10, 2023).
 19. KENNETH M. JOHNSON & DANIEL T. LICHTER, UNIV. OF N.H., GROWING RACIAL DIVERSITY IN RURAL AMERICA: RESULTS FROM THE 2020 CENSUS 1 (2022), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1450&context=carsey> [<https://perma.cc/9HKR-Z5EG>].

A. Growth of the Aging Population

Harvard's Joint Center for Housing Studies estimates that by 2038, there will be 10.1 million single-person households among those eighty and over.²⁰ According to the 2012–2016 American Community Survey data, “[m]ore than 1 in 5 older Americans lives in rural areas” and will continue to trend upwards as the older rural population ages.²¹ As this population ages, greater healthcare needs arise. Some data suggests that there may be an unmet need for more advanced care options or supportive housing arrangements in rural areas as greater portions of the urban sixty-five plus community live in skilled nursing facilities compared to those in rural communities.²² For example, in 2018, single households aged eighty and over had a median income of \$22,200, and although they often own their homes, they are cost-burdened (meaning they pay more than thirty percent of their income on housing).²³ Affordability, accessibility, and supportive care needs present significant obstacles to many older adults ability to age in place.²⁴ Yet, many older adults express a desire to age in place.²⁵

A 2019 study found that many middle-income seniors did not qualify for public benefits programs and could not afford to pay the costs associated with residing in an assisted living facility.²⁶ The Elder Economic Security Standard Index estimates how much income older households need in order to sustain their housing, transportation, food,

-
20. Jennifer Molinsky, *The Number of People Living Alone in Their 80s And 90s Is Set To Soar*, HARV. JOINT CTR. FOR HOUS. STUD. (March 10, 2020), <https://www.jchs.harvard.edu/blog/the-number-of-people-living-alone-in-their-80s-and-90s-is-set-to-soar> [https://perma.cc/2PUB-JCS6].
 21. Amy Symens Smith & Edward Trevelyan, *In Some States, More Than Half of Older Residents Live in Rural Areas*, U.S. CENSUS BUREAU (October 22, 2019), <https://www.census.gov/library/stories/2019/10/older-population-in-rural-america.html> [https://perma.cc/EL3D-E5R2].
 22. *Id.* (3.1% of urban residents reside in skilled nursing facilities versus 1.4% of rural residents).
 23. Molinsky, *supra* note 20.
 24. See JONATHAN VESPA ET AL., U.S. CENSUS BUREAU, OLD HOUSING, NEW NEEDS: ARE U.S. HOMES READY FOR AN AGING POPULATION? 2–3 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p23-217.pdf> [https://perma.cc/JK9R-5P4D] (finding that only one in ten U.S. homes were aging-ready which researchers defined as a “step-free entryway, a bedroom and full bathroom on the first floor, and at least one bathroom accessibility feature.”); see also Mark D. Bauer, “*Peter Pan*” as Public Policy: Should Fifty-Five-Plus Age-Restricted Communities Continue to be Exempt from Civil Rights Laws and Substantive Federal Regulation? 21 ELDER L.J. 33, 43–44 (2013).
 25. See UNIV. OF MICH. INST. FOR HEALTHCARE POL’Y & INNOVATION, OLDER ADULTS’ PREPAREDNESS TO AGE IN PLACE (2022) (researchers found that 88% of adults age fifty to eighty desire place importance on aging-in-place).
 26. See generally Caroline F. Pearson et al., *The Forgotten Middle: Many Middle-Income Seniors Will Have Insufficient Resources for Housing and Healthcare*, 38 HEALTH AFFS. 851, 852, 857 (2019).

and health costs.²⁷ For an older single-person household in good health in rural Monroe County, Pennsylvania, a renter needs \$27,708 per year for economic security while an older single-person household in good health with a mortgage needs \$36,804 per year to sustain their estimated household costs.²⁸ Nationwide data reveals that eighty percent of older adult homeowners reside in single-family structures and that a growing portion of older adults reside in low-density or non-metro communities.²⁹ In addition to the concentration of seniors in rural communities, the housing stock in rural areas is also aging.³⁰

B. Growing Diversity of Rural Communities

Although recent census data reveals that rural populations have declined by 0.6% between 2010 and 2020, rural America experienced an overall increase in racial diversity.³¹ While still predominately white and aging, rural communities are now comprised of 9% Hispanic, 7.7% Black, 2.5% Native Peoples or some other race, and 3.9% multiracial residents.³² This change in demographics is interesting to note, as the community with whom rural seniors may choose to home share is changing.³³ Certainly, rural seniors may have a shared living arrangement with another senior, but often home share matches are inter-generational which allows for the house mate to provide additional support to the senior through household upkeep and maintenance.³⁴

The shifting demographics of the rural population is particularly pronounced in younger generations with nearly one in three rural

-
27. Elder Index, *What is the true cost of growing older in America?*, UNIV. OF MASS. BOSTON (2021), ElderIndex.org [https://perma.cc/M65X-3HFA] (select “Explore the Index”).
 28. *Id.* (economic security and household costs include estimates for food, healthcare, transportation, and miscellaneous expenses) (select “Monroe County, PA” from the drop down bar of the website).
 29. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., HOUSING AMERICA’S OLDER ADULTS 2019 3–4 (2019) [hereinafter HOUSING AMERICA’S OLDER ADULTS].
 30. Rolf Pendall, Laurie Goodman, Jun Zhu & Amanda Gold, *People and homes are aging quickly in our rural communities*, URB. INST. (October 20, 2016), https://www.urban.org/urban-wire/people-and-homes-are-aging-quickly-our-rural-communities [https://perma.cc/8S2A-M4GE] (“In 2013, 63 percent of rural homes were at least 30 years old.”).
 31. Johnson & Lichter, *supra* note 19, at 1.
 32. *Id.* at 1–2.
 33. See DW Rowlands & Hanna Love, *Mapping rural America’s diversity and demographic change*, BROOKINGS (Sept. 28, 2022), https://www.brookings.edu/articles/mapping-rural-americas-diversity-and-demographic-change/ [https://perma.cc/L9RF-YH5X] (noting the diversification of rural communities is led by Latinx population growth).
 34. See Noelle Marcus, *Tackling the Housing Crisis and Bridging Generational Divides Through Home-Sharing*, STAN. SOC. INNOVATION REV. (March 22, 2021), https://ssir.org/articles/entry/tackling_the_housing_crisis_and_bridging_generational_divides_through_home_sharing# [https://perma.cc/AT6W-X9Z8].

children coming from racial or ethnic minority populations.³⁵ The way marginalized racial and ethnic populations choose or prefer to live may also be different than the typical white nuclear single-family household. For example, a 2021 study found that one in four Americans live in multigenerational households.³⁶ Hispanic Americans and Black Americans are much more likely than White Americans to live in a multigenerational household.³⁷ Although cultural and family expectations were listed as one reason for multiple generations, sharing a household, the need for eldercare, and childcare topped the list of reasons why families shared households.³⁸

C. Available Stock and Demand

Throughout the last decade, rural home purchases have outpaced the purchase of homes in urban and suburban areas.³⁹ According to state-wide data from Pennsylvania, rural home purchases continued to exceed urban home purchases during the COVID-19 pandemic.⁴⁰ Mortgage loan amounts tend to be lower in rural communities with most borrowers over fifty-five years old.⁴¹ The rural real estate market may be desirable from a cost and opportunity perspective, but research shows that (at least in Pennsylvania) overall housing quality is lower in rural areas than in urban areas.⁴²

Senior housing is limited in rural communities and there are less available long-term care options.⁴³ Industry experts indicate that the costs of developing new senior housing facilities continues to rise.⁴⁴ In 2022, data from CBRE Group, Inc. estimates a cost of \$317,400 per

35. Johnson & Lichter, *supra* note 19, at 2.

36. GENERATIONS UNITED, *Fact Sheet: Multigenerational Households 1* (2021), <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-FactSheet.pdf> [<https://perma.cc/CW72-R4YH>].

37. *Id.* at 2.

38. *Id.* at 1.

39. See ECON. & HOUS. RSCH., FREDDIE MAC, RURAL HOME PURCHASES OUTPACED URBAN PURCHASES THROUGH THE 2010S (2021), https://www.freddiemac.com/fimac-resources/research/pdf/202105-note-rural_home_purchases.pdf [<https://perma.cc/P892-9DDP>] [hereinafter RURAL HOME PURCHASES].

40. See *generally* CTR. FOR RURAL PA., WELCOME TO RURAL PENNSYLVANIA: COVID-19 AND RESIDENTIAL PROPERTY SALES 3 (2021), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/3/COVID-19-and-Residential-Property-Sales-102721.pdf> [<https://perma.cc/3EW6-XFB6>].

41. RURAL HOME PURCHASES, *supra* note 39, at 5, 7.

42. YING YANG ET AL., CTR. FOR RURAL PA., ASSESSMENT AND ANALYSIS OF HOUSING QUALITY AND POLICIES IN RURAL PENNSYLVANIA 19 (2022), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/251/Assessment%20of%20Housing%20Stock%20Quality%202022-revised.pdf> [<https://perma.cc/J7LS-9NKX>].

43. See Catherine Hawes et al., *Assisted Living in Rural America: Results From a National Survey*, 21 J. OF RURAL HEALTH, no. 2, March 2005, at 137.

44. See *generally* CBRE RSCH., 2022 SENIORS HOUSING DEVELOPMENT COSTS (2022) [hereinafter 2022 SENIORS HOUSING DEVELOPMENT COSTS].

unit or \$333 per square foot for a 129-unit senior development home.⁴⁵ Although land acquisition costs may be lower in rural communities, rural incomes are typically lower, resulting in affordability challenges.⁴⁶ Many rural seniors own their own homes, but many rural homeowners are still paying off their mortgages or are faced with costs associated with maintenance or retrofitting their aging homes.⁴⁷ The high costs to develop new senior housing coupled with the fact that many rural seniors own their own homes has led policymakers and government officials to subsidize individual home repair.⁴⁸

In 2018, the Housing Assistance Council prepared a report examining the USDA's Rural Rental Housing Portfolio, a primary source of affordable housing opportunities in rural communities.⁴⁹ Within the USDA's Section 515 portfolio are over 13,000 rental properties providing more than 415,000 affordable units.⁵⁰ These Section 515 properties are located in every state and the majority of tenants are seniors and persons with disabilities who receive rental assistance.⁵¹ Affordability restrictions remain in place on Section 515 properties until the loan matures or is prepaid by the owner.⁵² Rental assistance for many of these projects end when the federal loan matures or is prepaid, which will impair tenants ability to prepay rent.⁵³ Many of these Section 515 loans are expected to mature at a heightened pace beginning in 2028⁵⁴ with little to no replacement development planned. Once Section 515

45. *Id.* at 3 fig.1.

46. See Rachele Levitt, *Housing Challenges of Rural Seniors*, U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF POL'Y DEV. & RSCH. (Summer 2017), <https://www.huduser.gov/portal/periodicals/em/summer17/highlight3.html> [https://perma.cc/U4NK-TL3B] (In 2017, 83% of older rural adults owned their own homes and 54% of older rural adult renters are cost-burdened).

47. *Id.*

48. See Single Family Housing Repair Loans and Grants, 61 Fed. Reg. 59779 (Nov. 22, 1996) (to be codified as amended at 7 C.F.R. pt. 3550 (The USDA Section 504 Home Repair Program provides grants and loans to income-eligible households sixty-two or older); see also COVID-19 ARPA Whole-Home Repairs Program, PA. DEP'T OF CMTY. & ECON. DEV., <https://dced.pa.gov/download/whole-home-repairs-fact-sheet/?wpdmdl=119745> [https://perma.cc/L53Q-UB88] (last visited Sept. 24, 2023) (allocating COVID-19 American Rescue Plan Act funding towards home repairs for Pennsylvania homeowners whose income is less than 80% of the area median income).

49. See HOUS. ASSISTANCE COUNCIL, RENTAL HOUSING FOR A 21ST CENTURY RURAL AMERICA (2018), https://ruralhome.org/wpcontent/uploads/storage/documents/publications/rrreports/HAC_A_PLATFORM_FOR_PRESERVATION.pdf [https://perma.cc/2RGM-DTQD].

50. *Id.* at 8.

51. *Id.* at 9.

52. See 7 C.F.R. § 3560.72(a)(2) (2022).

53. See *Id.* § 3560.660(b).

54. See USDA Rural Development *Maturing Mortgages*, AFFORDABLE HOUS. ONLINE, <https://affordablehousingonline.com/rd-maturing-mortgages> [https://perma.cc/A43G-TUK4] (last visited Mar. 11, 2023).

loans mature and affordability restrictions end, these property owners could choose to increase rent to market-rate, potentially displacing many lifelong tenants and contribute to a loss of available affordable housing units in the surrounding community.

D. Challenges to Development in Rural Communities

There are funding and density challenges to developing government subsidized multi-unit senior facilities in rural communities. Additionally, available single-family housing stock can be limited or far from transit and other social infrastructure.⁵⁵ Since USDA financing for rural new construction is nonexistent, low-income housing tax credits (LIHTCs) serve as one of the primary means of funding affordable housing.⁵⁶ Although some state housing finance agencies set aside 50% of their tax credit allocations for urban and 50% of their tax credit allocations to a rural/suburban pool,⁵⁷ LIHTC-funded developments are much smaller in rural areas.⁵⁸

Furthermore, LIHTC-funded developments account for a greater portion of multifamily rental units in rural areas which “demonstrates the difficulty of providing affordable housing without subsidy and the heavy dependence that [rural regions have] on tax credits.”⁵⁹ Density requirements, set-asides, and other LIHTC-funding preferences are set by state Qualified Action Plans.⁶⁰ For instance, in Pennsylvania, proposed projects must contain at least twenty-four units to be eligible for tax credit financing.⁶¹ Therefore, in Pennsylvania it may not be as

55. Transit-oriented developments are typically found in metropolitan areas where there is higher density development; however, affordable housing options are usually lacking from these developments. See *Housing Affordability in Transit-Oriented Developments*, U.S. DEP’T OF HOUS. & URB. DEV., OFF. OF POL’Y DEV. & RSCH. (May 17, 2022), <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-051722.html> [<https://perma.cc/3YB9-54YL>].

56. See Francis Torres, *Preserving Long-Term Affordability in LIHTC Housing*, BIPARTISAN POL’Y CTR. (May 17, 2023), <https://bipartisanpolicy.org/blog/preserving-lihtc-housing/#> [<https://perma.cc/3S37-BZDM>].

57. See, e.g., PA. HOUS. FIN. AGENCY, ALLOCATION PLAN FOR PROGRAM YEAR 2022 LOW INCOME HOUS. TAX CREDIT PROGRAM 27 (2022), https://www.phfa.org/forms/multifamily_news/news/2022/2022-lihtc-allocation-plan.pdf [<https://perma.cc/5MP7-WMSV>].

58. See FREDDIE MAC MULTIFAMILY, LIHTC IN RURAL PERSISTENT POVERTY COUNTIES 8 (2020), https://mf.freddiemac.com/docs/lihtc_persistent_poverty_counties.pdf [<https://perma.cc/Y8UB-2WFP>] (finding that LIHTC properties in rural areas are on average thirty-nine units, while the national average size LIHTC property is seventy-two units).

59. *Id.* at 12.

60. *Elements of Effective State Qualified Allocation Plans*, NAT’L HOUS. CONF., <https://nhc.org/policy-guide/low-income-housing-tax-credit-the-basics/elements-of-effective-state-qualified-allocation-plans/> [<https://perma.cc/LKH8-CG23>] (last visited Sept. 8, 2023).

61. PA. HOUS. FIN. AGENCY, TAX CREDIT PROGRAM GUIDELINES 57 (2022), https://www.phfa.org/forms/multifamily_application_guidelines/guidelines/2022/2022-mpg-04.pdf [<https://perma.cc/ZJ7T-CS4V>].

feasible to propose LIHTC projects in rural areas that cannot support at least twenty-four units, leaving a large gap in financing for rural affordable housing. State-administered federal HOME Investment Partnership Program Funds can often be used to provide gap financing for new construction or rehabilitation deals.⁶² However, in some jurisdictions like Pennsylvania, high priority for HOME funds are given to developments with less than ten units.⁶³ This creates limited opportunity for finance and funding for developers aiming to develop a market-responsive development.

Another tool, the Community Reinvestment Act of 1977 (CRA), mandates that federally insured banking and savings associations invest in low and moderate-income communities.⁶⁴ Critics have argued that the CRA motivates investors to invest in urban/metropolitan areas as opposed to rural areas.⁶⁵ While only eight percent of lenders provide services to a majority of rural regions, policy researchers have found that the CRA does provide some assistance to rural lenders and developers.⁶⁶ However, additional modifications could be made. New loans, refinancing of existing single family mortgages, or other capital sources may be necessary to retrofit the aging housing stock in rural communities and to also assist with accessibility features or other conversions for shared use.

Additionally, lower density options such as those created by innovative shared housing and intergenerational models often have challenges obtaining interest from tax-credit investors.⁶⁷ Rural areas also have challenges related to land preservation efforts. Specifically in rural communities, desirable housing development locations may be limited as preservation of agricultural farmland and land conservation easements⁶⁸ garner top priority. But traditional land zoning and

62. See NAT'L COUNCIL OF STATE HOUS. AGENCIES, HOME INVESTMENT PARTNERSHIPS PROGRAM 2023 FAQs 1 (2023).

63. PA. DEP'T OF CMTY. & ECON. DEV., HOME PROGRAM GUIDELINES 2 (2023) <https://dced.pa.gov/download/home-program-guidelines/?wpdmml=80332> [<https://perma.cc/WZQ4-LCF5>].

64. See 12 U.S.C. §§ 2901–2908 .

65. See *Policy Brief: Community Reinvestment Act Serving Communities of Color and Rural CDFIS*, PARTNERS FOR RURAL TRANSFORMATION, <https://www.ruraltransformation.org/blog/policy-brief-community-reinvestment-act-serving-communities-of-color-and-rural-cdfis/> [<https://perma.cc/Y6JQ-D566>] (last visited Mar. 11, 2023).

66. See HOUS. ASSISTANCE COUNCIL, THE COMMUNITY REINVESTMENT ACT AND MORTGAGE LENDING IN RURAL COMMUNITIES 21, 29 (2015).

67. See Chris Edwards & Vanessa Brown Calder, *Low-Income Housing Tax Credit: Costly, Complex, and Corruption-Prone*, CATO INST. 3 (Nov. 13, 2017) (arguing that the LIHTC program incentivizes developers to include higher construction costs and discourages building design and innovation).

68. The National Conservation Easement Database indicates there are 221,256 conservation easements that preserve over 33.5 million acres. See NAT'L CONSERVATION EASEMENT DATABASE, <https://www.conservationeasement.us/> [<https://perma.cc/XHU9-NTAH>] (last visited Mar. 11, 2023).

market-based preservation tools tend to favor primarily white property owners and exclude other community voices from land use conversations in rural areas.⁶⁹ According to the 2017 National Resources Inventory, developed land accounts for 6% of land at 116.3 million acres while cropland and pastureland combined comprise 25% of land at 489.1 million acres.⁷⁰ Developed land has grown by 44 million acres between 1982 and 2017, but the amount of acres developed per person continues to slow despite growth in population.⁷¹

This decline in number of acres developed per person may be an intentional reaction on the part of developers and planners to combat urban sprawl,⁷² which tends to have greater impacts on metropolitan areas than rural communities.⁷³ Especially in urban areas, some cities have used infill development as a means of increasing density and reimagining vacant land near already existing infrastructure.⁷⁴ For example, California law defines infill as “a residential or mixed-use residential project located within an urbanized area on a site that has been previously developed, or on a vacant site where at least seventy-five percent of the perimeter of the site adjoins parcels that are developed with urban uses.”⁷⁵ In rural contexts, shared housing, accessory dwelling units,⁷⁶ and home sharing models can serve as infill in communities where development is limited and there are vacant properties such as motels or low-cost opportunities in single-family housing stock.⁷⁷

69. See Liz C. Rinehart, *Zoned for Injustice: Moving Beyond Zoning and Market-Based Land Preservation to Address Rural Poverty*, 23 GEO. J. ON POVERTY L. & POL'Y 63, 89 (2015).

70. U.S. DEP'T OF AGRIC., SUMMARY REPORT: 2017 NATURAL RESOURCES INVENTORY ch. 2, at 1 (2020).

71. *Id.* ch. 2 at 6, 7.

72. Sprawl is low-density development that spreads out from a central city hub (rather than creating greater internal density in the city). Suburban sprawl development is often characterized by a reliance on the automobile and a lack of public transportation. See David B. Resnik, *Urban Sprawl, Smart Growth, and Deliberative Democracy*, 100 AM. J. PUB. HEALTH 1852, 1853 (Oct. 2010).

73. See generally DEAN PACILLI, COMPACT GROWTH AND SMART CITY DEVELOPMENT: THE UNSUSTAINABILITY OF URBAN SPRAWL (2019); Daniel P. Bigelow et al., *A major shift in U.S. land development avoids significant losses in forest and agricultural land*, 17 ENV'T. RSCH. LETTERS 1 (2022) (finding that rising gas prices have been a primary factor in denser development trends).

74. *What Is Infill Development?*, PLANETIZEN, <https://www.planetizen.com/definition/infill-development> [<https://perma.cc/53D6-9W4K>] (last visited Mar. 12, 2023).

75. CAL. HEALTH & SAFETY CODE § 53545.12(e)(1) (West 2019).

76. Accessory Dwelling Units, which are converted or constructed within the existing property footprint, also serve as a type of shared housing infill, but are beyond the scope of this Article's focus. The author supports easing restrictions on the development of ADUs as part of the solution to provide affordable housing to seniors and will explore that topic more fully in a subsequent paper.

77. *The Housing Crisis – The Adaptive Re-Use Model*, THE SANDERS INST. (Jan. 27, 2022), <https://sandersinstitute.org/the-housing-crisis-the-adaptive-re-use-model> [<https://perma.cc/7TXE-ZXYH>].

III. WHAT IS SHARED HOUSING?

In a shared housing arrangement, two or more unrelated people or families live together in one residential housing unit or dwelling.⁷⁸ According to the U.S. Department of Housing and Urban Development, shared housing is a “unit [that] consists of both common space for shared use by the occupants of the unit and separate private space for each [resident or family].”⁷⁹ Shared housing may include forms of intergenerational living arrangements.⁸⁰ Shared housing can be created through informal (illegal) and formal (legal) modifications that allow for better use of household space and refinement of household composition.⁸¹ It is often described as a “community-focused solution” that is facilitated through state-sponsored match programs, non-profits or private entities.⁸²

Households create and utilize additional dwelling space in many informal ways that may not be permitted by current laws, including (1) accessory apartments without permits; (2) residing with a prohibited number of unrelated adults; (3) creating an unlicensed home business that shares space with a residential dwelling; and (4) short-term rentals that violate homeowners’ association or planned unit development (or even local ordinance)⁸³ rules.⁸⁴ The shared housing focused of in this Article is unrelated adults living together in a single-family dwelling either through shared living or home share agreements.

A. TYPES OF SHARED HOUSING

Home-sharing, co-housing,⁸⁵ and cooperative housing are all different shared housing models. Types of shared housing include single-room

78. See U.S. DEP’T OF HOUS. & URB. DEV., ASSESSMENTS OF SHARED HOUSING IN THE UNITED STATES 1 (2021) [hereinafter ASSESSMENTS OF SHARED HOUSING]; UNDER ONE ROOF, *supra* note 9, at 59.

79. 24 C.F.R. § 982.4(b) (2015) (under definition for “Shared Housing”).

80. Ernest Gonzales, *Building University Capacity for Intergenerational Home-Sharing*, STANDARD SOC. INNOVATION REV. (May 24, 2021), https://ssir.org/articles/entry/building_university_capacity_for_intergenerational_home_sharing [https://perma.cc/2T4C-CC7Q].

81. See UNDER ONE ROOF, *supra* note 9, at 33.

82. See KATHRYN GWATKIN GOULDING ET AL., AFFORDABLE LIVING FOR THE AGING, STRATEGIES FOR SCALING SHARED HOUSING: BEST PRACTICES, CHALLENGES & RECOMMENDATIONS 5–6 (2012).

83. See *e.g.*, S.F. ADMIN. CODE § 41A.

84. UNDER ONE ROOF, *supra* note 9, at 34.

85. *Id.* at 55 (Describing co-housing has a “type of shared housing development that began as a grass roots movement in Denmark and Holland in the 1970s.”) These co-housing arrangements are typically individual units that also have access to communal facilities. *Id.* Planned unit developments are a modern riff on this model. *Id.*

occupancy (SRO) housing,⁸⁶ shared living residences (SLRs),⁸⁷ accessory dwelling units, and permanent supportive housing. Historically in a rural context, agricultural workers lived in various shared spaces on the farm, traveling clergy members and doctors rented or were hosted in rooms in community members' homes, and widowers took in boarders and offered their version of a rural boarding house.⁸⁸ Today, we might think of planned use developments or condominiums with shared spaces as a modern version of shared housing. Additionally, we have seen a resurgence in the promotion of legalized accessory dwelling units.⁸⁹ Formal home-share arrangements originated in the 1970s through advocacy efforts by Maggie Kuhn and the Gray Panthers which resulted in the founding of the National Shared Housing Resource Center in 1980.⁹⁰

When we think of a shared living arrangement, we often think of having a roommate. Beyond institutional arrangements that are not voluntary, shared housing is characterized as “an intentional and purposeful commitment” to share either physical space, social life and household tasks, and/or finances.⁹¹ Typical sharing arrangements involve more than one household and may vary in its level of independence. Best practices for home sharing encourage the creation of shared living contracts or agreements.⁹² “Sharing, like any other human relationship, depends upon trust and predictability.”⁹³ Therefore, outlining which spaces are common, which spaces are private, and how household tasks will be divided are important for the longevity of the arrangement. Home sharing is often facilitated through an

86. SROs are living units for one individual with a shared bath. *Id.* at 75–76. They were initially built by private developers to house poor transient workers in urban areas between 1870 and 1920. *Id.* at 77. Over time, SROs became a permanent housing option for very-low income single adults, but subsequently fell out of favor with public officials and developers leading to mass destruction of SRO units and an increase in homeless populations. *Id.*

87. SLRs could include group homes, cooperative living, communal living or residence homes and often integrate case management and other supportive services. *See* GOULDING ET AL., *supra* note 82, at 8.

88. *See e.g.*, Michael Ann Williams, *Selling Domestic Space: The Boarding House in the Southern Mountains*, 12 PERSP IN VERNACULAR ARCHITECTURE 1, 1 (2005).

89. *See* EMILY HAMILTON & ABIGAIL HOUSEAL, MERCANTUS CTR. GEORGE MASON UNIV., A TASONOMY OF STATE ACCESSORY DWELLING UNIT LAWS 1 (2023) (Eight states currently have state-wide accessory dwelling unit legislation).

90. *About National Shared Housing Resource Center*, NAT. SHARED HOUS. RES. CTR., <https://nationalsharedhousing.org/about/> [<https://perma.cc/RG7Z-GSFB>] (last visited Mar. 12, 2023).

91. UNDER ONE ROOF, *supra* note 9, at 7.

92. HOMELESS POL'Y RSCH. INST., SHARED HOUSING: CHALLENGES, BEST PRACTICES, AND OUTCOMES 6 (2019) [hereinafter HOMELESS POL'Y RSCH. INST.].

93. *Id.* at 115.

intermediary organization, such as Nesterly,⁹⁴ HomeShare Vermont,⁹⁵ or a state-sponsored program such as The Shared Housing and Resource Exchange (SHARE) Program, which is administered through the Pennsylvania Department of Aging.⁹⁶

B. Growth and Success of Shared Housing

The way modern Americans are choosing to live has shifted. The stigma that shared housing preserves in our collective awareness is the belief that shared housing is only for poor and low-income families, single adults, teenaged parents with children, or service dependent persons.⁹⁷ However, shared housing is also sought out by middle-class households comprised of people who work from their residential space, older adults seeking companionship and a social community of support, and people who define their household relationships by “reciprocity rather than kinship” for various reasons.⁹⁸ People may choose shared housing for a variety of reasons, including financial, social, and cultural.⁹⁹

In the aftermath of the COVID-19 pandemic, many families have reconsidered how they live and work.¹⁰⁰ The proliferation of the hybrid workspace has fostered renewed interest in housing which combines business and residential space.¹⁰¹ For many low-income homeowners and homeowners of color, the house is their main financial asset,

94. NESTERLY, <https://www.nesterly.com/about-us/> [<https://perma.cc/PZ4Y-RWEG>] (last visited Mar. 15, 2023).

95. HOMESHARE VT., <https://www.homesharevermont.org/> [<https://perma.cc/5T5R-HCP8>] (last visited Mar. 15, 2023).

96. SHARE - Shared Housing and Resource Exchange, PA. DEP'T OF AGING, <https://www.aging.pa.gov/aging-services/housing/Pages/SHARE.aspx> [<https://perma.cc/K2QT-V2C8>] (last visited Mar. 15, 2023).

97. See UNDER ONE ROOF, *supra* note 9, at 125.

98. See *Id.*

99. See ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 1, 4, 11.

100. See Andrew Collins, *The pandemic hasn't killed house sharing – its reinvented it*, FORTUNE (Nov. 17, 2021, 3:05 PM), <https://fortune.com/2021/11/17/covid-house-sharing-roommates-real-estate-andrew-collins-bungalow/> [<https://perma.cc/AR5M-B9XP>] (“More landlords are transforming single-family homes—once primarily suited for tenants with kids—into roommate-living spaces for three, four, even five individual renters, each with their own leases for maximum flexibility.”); Kim Parker et al., *COVID-19 Pandemic Continues to Reshape Work in America*, PEW RSCH CTR., (Feb. 16, 2022), <https://www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america/> [<https://perma.cc/AH3V-9EG4>]; Heather Kelly & Rachel Lerman, *The pandemic is making people reconsider city living, trading traffic for chickens*, WASH. POST (June 1, 2020, 5:41 PM), <https://www.washingtonpost.com/technology/2020/06/01/city-relocate-pandemic/> [<https://perma.cc/7SZ7-TKWN>].

101. See e.g., CHARLES L. RUBY, *PLAY. LIVE. WORK. A CASE STUDY IN THE NEXT GENERATION OF LIVE, WORK, PLAY*, DELOITTE (2016).

and many older households are cost burdened.¹⁰² For those who own their home, sharing domestic space is therefore one way to generate income, resulting in an opportunity to improve economic security and the ability to age in place.

More than thirty-six million households or 28% of all households in the United States are sole-person households—a statistic that has doubled within the last forty years.¹⁰³ In 2020, baby boomers comprised 39% of sole person households and 68% of sole-person households identified as White.¹⁰⁴ Researchers at Freddie Mac estimate that an additional 5 million sole-person households will be added by 2028, resulting in increased demands for smaller, more affordable homes.¹⁰⁵ In juxtaposition to the rise of sole-person households is a documented increase in multigenerational living arrangements.¹⁰⁶ People of color are more likely to reside in multigenerational households and as the Latinx and Asian population continues to increase, experts estimate that multigenerational households will continue to grow.¹⁰⁷

In 2017, only 1.8% of ages sixty-five plus lived with non-relatives in a roommate or home-sharing arrangement.¹⁰⁸ Current U.S. Department of Housing and Urban Development (HUD) estimates place shared housing rates between three and twenty percent.¹⁰⁹ Although the shared housing population remains relatively small, between 2006 and 2016, the number of older adults in shared housing arrangements

102. See HOUSING AMERICA'S OLDER ADULTS, *supra* note 29, at 7–8. Nearly 10 million households age 65 and over spend more than 30 percent of their income on housing. *Id.*

103. THE GROWTH OF SOLE-PERSON HOUSEHOLDS, *supra* note 3, at 1.

104. *Id.* at 2–3.

105. *Id.* at 6.

106. GENERATIONS UNITED, FAMILY MATTERS: MULTIGENERATIONAL LIVING IS ON THE RISE AND HERE TO STAY 20 (2021), <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-WEB.pdf> [<https://perma.cc/C6NX-3LQA>] [hereinafter FAMILY MATTERS]. A 2021 public survey of 2,000 adults found that one in four Americans ages 18+ are currently living in multigenerational households. *Id.* at 5. This is a 271% increase over a 10-year period based upon a similar survey. *Id.* at 1. The Joint Center for Housing Studies of Harvard University notes there was an increase in multigenerational households between 2007-2017 resulting in 20 percent of individuals age 65 and older living in multigenerational settings. See HOUSING AMERICA'S OLDER ADULTS, *supra* note 29, at 3.

107. 40% of Latinx and Asian adults aged 65-79 and 47% of Latinx and Asian adults age 80+ lived with other generations. See HOUSING AMERICA'S OLDER ADULTS, *supra* note 29, at 3. Black households had lower adopts of multigenerational housing with 27% of black adults aged 65-79 and 36% living multigenerationally. *Id.* Generations United Survey revealed similar statistics with multigenerational housing rates at 45% for Latinx Americans, 33% for Black Americans and 19% for White Americans. See GENERATIONS UNITED, *supra* note 36, at 6.

108. See HOUSING AMERICA'S OLDER ADULTS, *supra* note 29, at 3.

109. See U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 46, at 8.

grew by eighty-eight percent.¹¹⁰ Those who choose to enter a formal program seeking to share a home are typically older adults or low-income adults.¹¹¹ Researchers have found that seniors over seventy who home share primarily do so for companionship while seniors aged fifty to sixty-nine are mainly motivated by rental income.¹¹²

First rising to popularity in the 1980s, shared housing programs are enjoying a renaissance as U.S. household composition changes¹¹³ and communities seek solutions to address housing affordability, homelessness, and housing their aging population.¹¹⁴ As of 2023, the National Shared Housing Resource Center has fifty-five shared housing programs listed in their program directory; however, there are likely more that are not registered with this organization.¹¹⁵ This includes Project HOME (now HomeShare Vermont), a leader in the senior home share space, launched in 1982 and is still in existence after over forty years.¹¹⁶ In 1991, a five-year study by HomeShare Vermont documented the program's early challenges and outlining its success in providing a choice for seniors along the continuum of care, as well the importance of social exchange.¹¹⁷ Haaven, a private-market shared housing provider which partners with Share! in Los Angeles (and primarily serves the homeless and not senior community) indicates that its "per-bed cost is under \$4,000 (as opposed to over \$50,000 per bed for bridge housing and over \$500,000 per bed for permanent supportive housing) and since its inception, eighty-eight percent of its placed tenants have stayed housed."¹¹⁸ For seniors specifically, shared housing has the potential to

-
110. Jennifer Molinsky, *Are More Older Adults Sharing Housing?*, JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV. (Aug. 20, 2018), <https://jchs.harvard.edu/blog/are-more-older-adults-sharing-housing> [<https://perma.cc/6VPB-5Z75>].
111. See Kate H. Magid et al., *Sharing Space to Age in Community: A Mixed-Methods Study of Homeshare Organizations*, 34 J. OF AGING & SOC. POL'Y, no. 5, 2022, at 818.
112. Deborah E. Altus & R. Mark Mathews, *Examining Satisfaction of Older Home Owners with Intergenerational Homesharing*, 6 J. OF CLIN. GEROPSYCHOLOGY, no. 2, 2000, at 143–44.
113. See Richard Fry, *More adults now share their living space, driven in part by parents living with their adult children*, PEW RSCH. CTR. (Jan. 31, 2018), <https://www.pewresearch.org/short-reads/2018/01/31/more-adults-now-share-their-living-space-driven-in-part-by-parents-living-with-their-adult-children/> [<https://perma.cc/68YN-TLKH>].
114. Hannah Grabenstein, *More seniors are becoming homeless, and experts say the trend is likely to worsen*, PBS NEWSHOUR (March 3, 2023, 5:41 PM), <https://www.pbs.org/newshour/nation/more-seniors-are-becoming-homeless-and-experts-say-the-trend-is-likely-to-worsen> [<https://perma.cc/LE6R-TXL8>].
115. See *Homesharing Program Directory*, NAT'L SHARED HOUS. RES. CTR., <https://nationalsharedhousing.org/program-directory/> [<https://perma.cc/KU43-QHKS>] (last visited Aug. 23, 2023).
116. *Our History*, HOMESHARE VT., <https://www.homesharevermont.org/about-us/our-history/> [<https://perma.cc/7EXJ-3MQZ>].
117. See NICHOLAS L. DANIGELIS & ALFRED P. FENGLER, NO PLACE LIKE HOME: INTERGENERATIONAL HOMESHARING THROUGH SOCIAL EXCHANGE 230–48 (1991).
118. HOMELESS POL'Y RSCH. INST., *supra* note 92, at 3.

save millions of dollars per year in the Medicaid budget due to seniors postponing or avoiding entry into a nursing home.¹¹⁹

IV. BENEFITS OF SHARED HOUSING IN RURAL AREAS FOR SENIORS

Shared housing arrangements are formed for a variety of reasons. Due to our societal conditioning towards independent living, shared housing is often thought of as a temporary arrangement due to financial constraints, inadequate income, or the result of an emergency situation or need. Individuals are more motivated by the cost savings of home sharing than they tend to be by the reward of additional income.¹²⁰ While financial necessity is a reason why some folks embrace shared housing, researchers have also identified several other reasons why folks decide to “double-up,” including: (1) residential improvement or enhancement of quality and location of housing; (2) social support which includes instrumental and emotional support; and (3) caretaking.¹²¹

“Housing policy and development practices have tended in this century to emphasize and foster images of household independence that ignore and occasionally deny the importance of social community in residential life.”¹²² Shared housing can serve to enhance social connection and well-being, provide care and supervision of older people or children, improve financial resources, enable older adults to age in place, and make it possible for a household member to continue their education or training or access better schools and jobs.¹²³ With the rise of single-person households, our aging population, and seniors desire to age in place, we are at risk of experiencing a loneliness epidemic that will negatively impact health.¹²⁴ For example, experts note that social isolation is equivalent to smoking fifteen cigarettes per day.¹²⁵

119. One provider estimated \$228,000 in Medicaid savings by helping eight nursing home eligible seniors remain at home. Henry Bodkin & Parnika Saxena, *Exploring Home Sharing For Elders*, 31 J. OF HOUS. FOR THE ELDERLY, no. 1, 2017, at 49.

120. See Nicholas L. Danigelis & Alfred P. Fengler, *Homesharing: How Social Exchange Helps Elders Live at Home*, 30 (2) GERONTOLOGIST 162, 168 (1990).

121. Sherry Ahrentzen, *Double Indemnity or Double Delight? The Health Consequences of Shared Housing and “Doubling Up”*, 59 J. OF SOC. ISSUES, no. 3, 2003, at 551–52 (2003).

122. UNDER ONE ROOF, *supra* note 9, at 7.

123. See *The health benefits of shared living*, HARV. HEALTH PUBL’G (May 1, 2018), <https://www.health.harvard.edu/staying-healthy/the-health-benefits-of-shared-living> [<https://perma.cc/DU8C-RUB7>].

124. OFF. OF THE U.S. SURGEON GEN., OUR EPIDEMIC OF LONELINESS AND ISOLATION: THE U.S. SURGEON GENERAL’S ADVISORY ON THE HEALING EFFECTS OF SOCIAL CONNECTION AND COMMUNITY 15 (2023) <https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf> [<https://perma.cc/5AXC-ZH8P>].

125. See Amanda Seitz, *Loneliness poses health risks as deadly as smoking, U.S. surgeon general says*, PBS NEWSHOUR (May 2, 2023, 4:24 PM), <https://www.pbs.org/newshour/health/loneliness-poses-health-risks-as-deadly-as-smoking-u-s->

Researchers recently examined the relationship between mental health and rental shared living arrangements among young single adults in Korea.¹²⁶ The study found that “house sharers show better mental health indicators in terms of mental health improvement and less probability of being in danger of social dysfunction, especially for those who voluntarily chose to live in shared housing.”¹²⁷ Also, stronger social support between residents and better housing quality conditions were found among those residents who had a preference for shared living.¹²⁸ The fact that mental health improvement is noted in situations where shared housing is viewed positively indicates the importance of choice, sense of belonging, strength of relationships, and residential preference in designing shared housing programs.¹²⁹

In another study, researchers examined the impacts of home-sharing on older adults aged fifty-five and older and similarly found that elder home providers benefited from participating in a shared housing agreement.¹³⁰ Benefits included reduced loneliness, assistance with activities of daily living and housekeeping tasks, and financial incentives such as providing supplemental income that could be used for healthcare needs and housing finances.¹³¹ However, challenges with home-share arrangements included “navigating boundaries, in terms of sharing space and time, and navigating interpersonal boundaries in terms of lack of familiarity and difficulties with communication.”¹³²

Shared housing is also beneficial from a community and government resources perspective. Single-family structures constitute the majority of Pennsylvania homes.¹³³ There are approximately 33.6 million spare bedrooms in the United States which breaks down to 9.4% more bedrooms than people.¹³⁴ Utilizing these unused spaces does not require building new infrastructure; therefore, making home-sharing

surgeon-general-says [<https://perma.cc/Z5D6-7UKD>]; see also Julianne Holt-Lunstad et al., *Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review*, 10 (2) PERSP. ON PSYCH. SCI. 227–37 (2015) (Researches analyzed seventy studies of older adults and found that social isolation increases the likelihood of mortality).

126. Jihun Oh & Jeongseob Kim, *Relationship between Mental Health and House Sharing: Evidence from Seoul*, 18 INT'L J. OF ENV'T. RSCH. AND PUB. HEALTH, no. 5, 2021, at 2495.
127. *Id.* at 2505.
128. *Id.*
129. *Id.* at 2505–06.
130. Laura Martinez et al., *More Than Just a Room: A Scoping Review of the Impact of Homesharing for Older Adults*, 4 INNOVATION IN AGING., no. 2, April 2020, at 5.
131. *Id.* at 6.
132. *Id.* at 9.
133. Single family structures constitute seventy-six percent of Pennsylvania homes. PA. HOUS. FIN. AGENCY, PENNSYLVANIA COMPREHENSIVE HOUSING STUDY 13 (2020), https://www.phfa.org/forms/housing_study/2020/pennsylvania-comprehensive-housing-study-full-report.pdf [<https://perma.cc/T4DV-AE2N>].
134. See ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 7.

a less costly option to development or even rental subsidy.¹³⁵ Nursing home space shortages, strains on government funding for congregate housing, lack of affordable rental units, and lack of available caregivers and staff are all alleviated when home-sharing arrangements assist with enabling elders to age in place.¹³⁶ Home-sharing arrangements are also strengthened when formal matching services are utilized and case management is available to help mitigate issues, including changing needs or possible elder abuse.¹³⁷

In California, one of the most expensive housing markets in the U.S., it costs on average \$480,000 to construct a new unit of affordable housing, an increase of seventeen percent over an eleven-year period.¹³⁸ As mentioned, one of the primary funding mechanisms for developing affordable housing are LIHTCs, which are administered through state housing finance agencies.¹³⁹ However, there are more applications for LIHTCs than there is funding available.¹⁴⁰ Therefore, although there may be costs associated with conversion or rehabilitation, shared housing densifies existing housing stock and can infill communities without the costs associated with constructing new units.¹⁴¹

-
135. *See generally* 2022 SENIORS HOUSING DEVELOPMENT COSTS, *supra* note 44; *see also* CTR. ON BUDGET & POL'Y PRIORITIES, UNITED STATES FEDERAL RENTAL ASSISTANCE FACT SHEET (2022), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-19housing-factsheet-us.pdf> [<https://perma.cc/94EJ-DAA3>] (In 2020 the federal government provided \$48.5 billion in rental assistance).
136. *See* Danigelis & Fengler, *supra* note 120, at 169–70.
137. *Id.* at 169. *See also* Martinez et al., *supra* note 130, at 10 (finding that facilitated home-share models with formal agreements and third-party assistance with enforcing home share rules and disputes is a risk mitigation strategy for preventing abuse for vulnerable older adults).
138. CAROLINA REID, THE COSTS OF AFFORDABLE HOUSING PRODUCTION: INSIGHTS FROM CALIFORNIA'S 9% LOW-INCOME HOUSING TAX CREDIT PROGRAM, TERNER CTR. FOR HOUS. INNOVATION 6 (2020), <https://turnercenter.berkeley.edu/research-and-policy/development-costs-lihtc-9-percent-california/> [<https://perma.cc/962U-UKAS>].
139. Yonah Freemark & Corianne Payton Scally, *LIHTC Provides Much-Needed Affordable Housing, But Not Enough to Address Today's Market Demands*, URB. INST. (July 11, 2023), <https://www.urban.org/urban-wire/lihtc-provides-much-needed-affordable-housing-not-enough-address-todays-market-demands> [<https://perma.cc/4P6M-Q9H7>].
140. In 2021 Pennsylvania received applications for 67 developments, but only funded 37 developments with a loss of 1,532 potential additional affordable units. *See, e.g.*, PA. HOUS. FIN. AGENCY, 2021 LOW INCOME HOUSING TAX CREDIT/PENNHOMES APPLICATIONS RECEIVED (2021), <https://www.novoco.com/sites/default/files/atoms/files/pennsylvania-lihtc-applications-received-2021-03052021.pdf> [<https://perma.cc/LRZ2-63JM>]; PA. HOUS. FIN. AGENCY, 2021 LOW INCOME HOUSING TAX CREDIT/PENNHOMES AND NATIONAL HOUSING TRUST FUND AWARDS (2022), <https://www.novoco.com/sites/default/files/atoms/files/pennsylvania-lihtc-awards-2021-10142021.pdf> [<https://perma.cc/C7QC-Y6EE>].
141. *See* HOMELESS POL'Y RSCH. INST., *supra* note 92, at 1; 2022 SENIORS HOUSING DEVELOPMENT COSTS, *supra* note 44.

V. LEGAL IMPEDIMENTS TO IMPLEMENTING SHARED HOUSING

Land use regulations, taxation regimes, a dearth of financing, and lack of fair housing and constitutional protections for unrelated households significantly limit shared housing opportunities in the United States. States get the right to implement zoning and land use policies through their constitutional right of police power which permits regulation (and restriction of individual property rights) for the health and safety of the community.¹⁴² Currently, if zoning laws prohibit unrelated people from living together, there is little legal redress; the Supreme Court has declined to recognize a constitutional right for unrelated people to live together.¹⁴³

Conversely, the court has afforded greater protection to legal or biological families who have a Fourteenth Amendment Due Process right to choose who they live with.¹⁴⁴ Some scholars have argued that the court's jurisprudence on police power and land use restrictions, which limit who can reside together, are inconsistent with decisions related to privacy and the First Amendment right of freedom of intimate association to choose who you reside with.¹⁴⁵ Despite a lack of federal constitutional protection for unrelated families residing together, there is no constitutional bar to states' ability to statutorily reform their zoning regulations to expressly permit unrelated people to live together.¹⁴⁶

Zoning and land use have historically been a function of local government.¹⁴⁷ This hyper locality of decision-making coupled with the courts' deference to municipal decision-making in the zoning context has resulted in challenges to implementing innovative shared housing models, particularly in settings that lack the political capital

142. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 379 (1926); see also 53 PA. CONS. STAT. § 10604(1), (4) (2023) (zoning ordinances shall be designed “[t]o promote, protect and facilitate . . . the public health, safety, morals, and the general welfare” and “[t]o provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family . . . and a reasonable range of multifamily dwellings in various arrangement.”)

143. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7–9 (1974). See also Rigel C. Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 FLA. L. REV. 1401, 1414 (2016) (most state court have upheld the lawfulness restrictive single-family zoning ordinances).

144. See *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977).

145. See Oliveri, *supra* note 143, at 1436–39.

146. Tim Iglesias, *Defining “Family” for Zoning: Contemporary Policy Challenges, Legal Limits and Options*, 37 ZONING & PLAN. L. REP., no. 5, May 2014, at 7 (“The upshot is that on the federal constitutional level, as long as a locality’s definition does not interfere with extended family living together or facially discriminate against a group home for persons with disabilities, they are probably valid.”).

147. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (zoning ordinances are permitted if they are substantially related to “public health, safety, morals, or general welfare” of the local community).

or resources at the municipal level such as rural areas.¹⁴⁸ Land use restrictions enforced at the local level allow communities to curate not just where their neighbors live, but “how one’s neighbor lives.”¹⁴⁹ Underlying this overregulation is a fear that different modes of living within a single-family area will reduce property values; however, there is no evidence of this.¹⁵⁰

A. Failure to Meet Building Code Requirements and Internal Density Regulations

Building codes serve to protect the health and safety of household residents and the greater community. Cities began to formally regulate the construction and design of buildings in the late 19th and early 20th century when fire and natural disaster destroyed swaths of housing.¹⁵¹ Density and building code restrictions regulate both internal and external elements of the property, including structural strength, egress, sanitation, adequate lighting and ventilation, accessibility, and energy conservation.¹⁵² Often, building codes are promulgated at the state-level, but decisions are left to local municipalities on whether to adopt the code or implement something different.¹⁵³ In 1994, spurred by a federal government mandate, three of the main building codes in the U.S. initiated consolidation into one International Building Code (IBC) by the International Code Council, which was first issued in 2000.¹⁵⁴

Some version of the IBC has been adopted or is in use in all fifty states and the District of Columbia.¹⁵⁵ In contrast, the International

148. *See Hartman v. Zoning Hearing Bd. Of Cumru Twp.*, 133 A.3d 806, 809 (Pa. Commw. Ct. 2016) (upholding the zoning board’s decision to issue a permit for a group of terminally ill individuals to reside together as a functional family in a single-family home despite a neighbor’s objections). *Cf. Grodinsky v. City of Cortland*, 163 A.D.3d 1181 (2018) (restricting rentals to no more than three unrelated people and requiring four or more people in a dwelling to be a traditional or functional family upheld as serving a legitimate government purpose of public nuisance and overcrowding from transient residents).

149. PAUL BOUDREAUX, *THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA* 41 (Palgrave Macmillan 1st ed. 2011).

150. UNDER ONE ROOF, *supra* note 9, at 128.

151. JIM ROSSBERG & ROBERTO T. LEON, *EVOLUTION OF CODES IN THE USA 2* (2013), https://www.nehrp.gov/pdf/UJNR_2013_Rossberg_Manuscript.pdf [<https://perma.cc/N6ND-UHLE>].

152. INT’L CODE COUNCIL, *EFFECTIVE USE OF THE INTERNATIONAL BUILDING CODE* (2018), <https://codes.iccsafe.org/content/IBC2018/effective-use-of-the-international-building-code> [<https://perma.cc/U8SH-S64P>].

153. *See* NEB. REV. STAT. §§ 71-6403, 6404(2)(b), 6406 (Reissue 2018).

154. *Id.* at 5, 7.

155. *See generally* INT’L CODE COUNCIL, *CODE ADOPTION MAP* (2020), https://www.iccsafe.org/wp-content/uploads/Code_Adoption_Maps.pdf [<https://perma.cc/2B52-6XGB>] [hereinafter *CODE ADOPTION MAP*]; *see also* INT’L CODE COUNCIL, *INTERNATIONAL CODES-ADOPTION BY STATE* (2021), <https://www.iccsafe.org/wp-content/uploads/>

Property Maintenance Code (IPMC) has only been adopted by forty states and the District of Columbia.¹⁵⁶ The IPMC covers issues like handrails, rubbish and garbage, vector and vermin extermination, and minimum light and ventilation requirements as well as plumbing, mechanical facilities, fixtures, fire safety and occupancy standards.¹⁵⁷ The vast majority of rural municipalities in Pennsylvania have not adopted property maintenance codes.¹⁵⁸ This means that there may be little to no local regulation in rural areas surrounding nuisance, dangerous buildings, or landscape maintenance, making it difficult to bring any enforcement actions when violations occur.¹⁵⁹

Although the IPMC is less widely adopted, particularly in rural areas, it does seek to regulate internal household spaces through minimal square footage requirements. For example, the IPMC requires specific sizes for living, dining, and bedroom areas depending upon the number of occupants.¹⁶⁰ The chart below provides more detail:¹⁶¹

Space	1-2 occupants	3-5 occupants	6 or more occupants
Living Room	120 square feet	120 square feet	150 square feet
Dining Room	No requirement	80 square feet	100 square feet
Bedrooms	50 square feet per occupant (minimum 70 square feet for a bedroom for one occupant)		

In a rural context, the lack of regulation on internal spatial use could advantage homeowners or renters who desire to use of their

Master-I-Code-Adoption-Chart-AUG-2021.pdf [https://perma.cc/4R3E-QTD9] (showing which states have adopted international code regulations).

156. See generally CODE ADOPTION MAP, *supra* note 155.

157. See INT'L PROP. MAINT. CODE § 101.2 (2021).

158. YING YANG ET AL., CTR. FOR RURAL PA., ASSESSMENT AND ANALYSIS OF HOUSING QUALITY AND POLICIES IN RURAL PENNSYLVANIA 4 (2022), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/251/Assessment%20of%20Housing%20Stock%20Quality%202022-revised.pdf> [https://perma.cc/R3MN-AN6T] (89% or 1,417 rural municipalities out of 1,592 total rural municipalities have not adopted a specific property maintenance code).

159. *Id.* at 4–5.

160. See INT'L PROP. MAINT. CODE § 404.4.1 (2021).

161. INT'L PROP. MAINT. CODE § 404.5 (2021).

dwelling in a shared arrangement. Some scholars have argued that restrictions on household spatial arrangements is less based on scientific health and safety data, but more closely linked with the dominant culture norms about the way we should live.¹⁶²

In the case of a property conversion to shared use or the addition of an accessory dwelling unit, a building code may be triggered.¹⁶³ However, some local jurisdictions permit homeowners to convert a portion of their property into an additional dwelling space known as an accessory dwelling unit (ADU).¹⁶⁴ ADUs, sometimes called “granny flats,” are not the primary residence and may or may not be connected to the main dwelling.¹⁶⁵ Usually, ADUs require separate bathroom and kitchen facilities and there are varied regulations on size and who is eligible to reside in an ADU.¹⁶⁶ Yet, some municipalities may restrict homeowners’ ability to create an ADU due to density limits¹⁶⁷ or place restrictions on who is eligible to reside there.¹⁶⁸

In response to urban sprawl, California passed statewide ADU bills in 2017 and 2020 that require local governments to adopt ADU ordinances and expand ADU permittance to two ADUs per single-family property.¹⁶⁹ Researchers have found that despite these state-wide efforts

162. See Ellen Pader, *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, 19 J. OF ARCHITECTURAL & PLAN. RSCH., no 4, 2002, at 302.

163. See, e.g., MIKE TURNS ET AL., THE PA. HOUS. RSCH. CTR., A QUICK GUIDE TO THE RESIDENTIAL PROVISIONS OF PENNSYLVANIA’S UNIFORM CONSTRUCTION CODE AND LOCAL AMENDMENTS 1-3 to 1-4 (2013), <https://www.phrc.psu.edu/assets/docs/Publications/AQuickGuidetotheResidentialProvisionsofUCC.pdf> [<https://perma.cc/MZ34-SMAE>].

164. See e.g., NEB. REV. STAT. § 19-5503(1) (Reissue 2022).

165. See AARP, THE ABCs OF ADUs: A GUIDE TO ACCESSORY DWELLING UNITS AND HOW THEY EXPAND HOUSING OPTIONS FOR PEOPLE OF ALL AGES 2–3 (2021), <https://www.aarp.org/content/dam/aarp/livablecommunities/housing/2022/ABCs%20of%20ADUs-web-spreads-082222.pdf> [<https://perma.cc/8927-BY9Q>].

166. See *id.* at 3.

167. For example, in Adams County, Pennsylvania, detached ADUs are required to be on a lot that is greater than one acre in size and can only house a maximum of two occupants. See ADAMS CNTY, PA., ZONING ORDINANCE § 1006 (2013). In Lackawaxen Township, Pike County Pennsylvania, ADUs cannot exceed 25 percent of the gross floor area of the main dwelling or be more than 750 square feet. See LACKAWAXEN TWP., PA., ZONING ORDINANCE § 513.3 (1992). In Oil Creek Township, Crawford County, Pennsylvania, an ADU must be located at least 20 feet from the permanent dwelling unit. See OIL CREEK TWP., PA., ZONING ORDINANCE § 302 (2017).

168. In Buffalo Township, Union County, Pennsylvania, either the primary dwelling or the ADU is required to be owner-occupied. See BUFFALO TWP., PA., ZONING ORDINANCE § 202 (1988). In BOTH OIL CREEK TOWNSHIP AND SOUTH SHENANGO TOWNSHIP IN CRAWFORD COUNTY, PENNSYLVANIA, THE ADU OCCUPANT MUST BE AT LEAST 60 YEARS OF AGE, CONVALESCENT, OR SOMEONE WITH A PHYSICAL OR MENTAL IMPAIRMENT *and* related by blood, marriage, or adoption to the occupancy of the main dwelling. See OIL CREEK TWP., PA., ZONING ORDINANCE § 302 (2017); SOUTH SHENANGO TWP., PA., ZONING ORDINANCE § 308 (2017).

169. See S.B. 1069, 2015-2016 Leg., Reg. Sess. (Cal. 2016); Assemb. B. 2299, 2015-2016 Leg., Reg. Sess. (Cal. 2016); S.B. 13, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

to reduce barriers to ADU construction, homeowners who build ADUs tend to be disproportionately white with higher incomes and greater access to information and professional services.¹⁷⁰ In recognition of the financial and administrative barriers to constructing an ADU, the California Housing Finance Agency has created a new \$40,000 ADU grant program for low and moderate income homeowners.¹⁷¹ In contrast to California's state-wide efforts to reduce regulatory barriers to ADUs, Pennsylvania has taken a more localized approach by creating an Elder Cottage Housing Opportunity (ECHO) Pilot Program, which is administered by the Area Agencies on Aging and places a temporary manufactured cottage on a participating homeowner's property.¹⁷² However, this program is small and is not available in all counties due to restrictions in funding resources¹⁷³ or zoning restrictions.

B. Antiquated Definitions of Family and Cohabitation under Zoning Laws

The purpose of zoning restrictions is to regulate or segregate different types of land use in order to protect the health, safety and general welfare of the community.¹⁷⁴ Zoning requirements can serve to limit the number or housing units per lot, require minimum lot or house sizes for single-family homes, or mandate specific parking space requirements and setback, all of which limit or prohibit shared housing.¹⁷⁵ Property owners often must seek an occupancy or use variance from local zoning boards when they change the use of their property or add an additional unit. This can be an expensive and difficult process for seniors to navigate.¹⁷⁶ Zoning boards are staffed by local residents and

170. See JULIA GREENBERG ET AL., TERNER CTR. FOR CMTY. INNOVATION REP., ADUS FOR ALL: BREAKING DOWN BARRIERS TO RACIAL AND ECONOMIC EQUITY IN ACCESSORY DWELLING UNIT CONSTRUCTION 1, 2 (2022), <https://turnercenter.berkeley.edu/wp-content/uploads/2022/08/ADU-Equity-August-2022-Final.pdf> [<https://perma.cc/D7C6-BPM6>].

171. See *ADU Grant Program*, CAL. HOUS. FIN. AGENCY, <https://www.calhfa.ca.gov/adu/> [<https://perma.cc/66BD-5C84>] (last visited May 29, 2023).

172. See Courtney Murphy, *ECHO program launching in Bedford, Huntingdon and Fulton Counties*, WTAJ-TV (Mar. 6, 2023, 09:07 AM), <https://www.wtaj.com/news/local-news/echo-program-launching-in-bedford-huntingdon-and-fulton-counties/> [<https://perma.cc/TZD5-YMCD>]; *Housing*, PA. DEP'T AGING, <https://www.aging.pa.gov/agingservices/housing/Pages/default.aspx> [<https://perma.cc/M9EV-JHQD>] (last visited May 23, 2023).

173. The ECHO Program secured a \$400,000 Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund (PHARE) which will fund the expansion to additional counties. See PA. DEP'T OF AGING, STATE PLAN ON AGING 2020-2024, at 15 (2020), https://www.aging.pa.gov/publications/state-plan-on-aging/Documents/2020-2024_State_Plan_on_Aging.pdf [<https://perma.cc/9GET-U3HM>].

174. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926).

175. See UNDER ONE ROOF *supra* note 9, at 110.

176. For example, in California, researchers found that homeowners attempting to build ADUs found the permitting process confusing and difficult to navigate. See

the review and approval process is highly influenced by neighboring residents and community members.¹⁷⁷

Zoning has been utilized by the government as a way to “discriminate on the basis of family form”¹⁷⁸ by extending and overreaching into regulating the user of the land and their relationships.¹⁷⁹ When zoning regulates users, it serves as a tool of oppression.¹⁸⁰ Segregating land uses became a permissible substitute “for those who sought to segregate people.”¹⁸¹ Local governments have long used zoning ordinances to define who can live together as a “family.” “Household” and “family” have become interchangeable in our lexicon, but “the U.S. Census measured only ‘households,’ but not ‘families,’ until 1950.”¹⁸²

How and why did government get involved with regulating our living arrangements? One scholar argues that equating nuclear family with legal tradition in zoning is not accurate.¹⁸³ Prior to the middle of the 20th century, many municipalities did not utilize a specific definition for family in their single-family zoning ordinances and courts mostly endorsed less restrictive definitions of family as a “functional” unit.¹⁸⁴ As communal living, co-housing, and shared living arrangements proliferated during the 1960s, municipalities turned towards more restrictive “blood, marriage, or adoption” definitions of family in a movement to preserve family values.¹⁸⁵

JULIA GREENBERG ET AL., UC BERKELEY TURNER CTR. FOR HOUS. INNOVATION, ADUs FOR ALL: BREAKING DOWN BARRIERS TO RACIAL AND ECONOMIC EQUITY IN ACCESSORY DWELLING UNIT CONSTRUCTION, 5–6 (2022), https://www.aducalifornia.org/wp-content/uploads/2022/08/ADUs_for_All.pdf [<https://perma.cc/Q6PU-JW59>].

177. See generally Munir Saadi, *Neighbor Opposition to Zoning Change*, 49 THE URB. LAW. 392, 413–14 (2017).
178. Kate Redburn, *Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn*, 128 YALE L.J. 2412, 2456 (2019). See generally Tim Iglesias, *Clarifying the Federal Fair Housing Act’s Exemption for Reasonable Occupancy Restrictions*, 31 FORDHAM URB. L.J. 1211 (2004).
179. See Maya Brennan et al., *How Zoning Shapes our Lives*, URB. INST. (June 12, 2019), <https://housingmatters.urban.org/articles/how-zoning-shapes-our-lives> [<https://perma.cc/7W82-JDLM>].
180. See *id.* (“Overly restrictive or exclusionary zoning makes it difficult for low-income households and people of color to live in communities with equal access to opportunities and amenities.”).
181. Rinehart, *supra* note 69, at 87.
182. BOUDREAUX, *supra* note 149, at 45.
183. See Redburn, *supra* note 178, at 2444.
184. See Adam Lubrow, “...Not Related by Blood, Marriage, or Adoption”: A History of the Definition of “Family” in Zoning Law, 16 J. OF AFFORDABLE HOUS. & CMTY. DEV. L., no. 2, 2007, at 150. See also *City of Syracuse v. Snow*, 205 N.Y.S. 785, 789 (Sup. Ct. 1924) (invalidating zoning regulation that intended to ban sorority houses because the municipality used a more inclusive definition of family as a single-housekeeping unit).
185. See Redburn, *supra* note 178, at 2438, 2439 (“Homeowners employed [property values] arguments to foster another kind of social exclusion; through restrictions on the family through zoning, they weaponized local government as a tool of sexual regulation and discrimination on the basis of family form.”).

As an illustration of the range and variety of how municipalities define family under their single-family zoning regulations, in rural Pennsylvania, there are at least seven different definitions of family (sometimes with multiple definitions per jurisdiction) across nine geographically distributed counties¹⁸⁶ and 130 municipalities.¹⁸⁷

A single individual ¹⁸⁸	“[T]wo or more persons related, by blood or marriage, or adoption.” ¹⁸⁹	Not more than three unrelated persons ¹⁹⁰	“[N]ot more than four unrelated persons.” ¹⁹¹	“[N]ot more than five persons who need not be so related.” ¹⁹²	“Not more than eight related or unrelated persons who are [a] functional [family].” ¹⁹³	“Any number of individuals living and cooking together as a single house-keeping unit.” ¹⁹⁴
85.38%	84.62%	35.38%	19.23%	13.85%	6.15%	17.69%

The vast majority of these 130 rural Pennsylvania jurisdictions define family as those related by “blood, marriage or adoption,” and 75% allow unrelated folks to live together, but place limits on the number of unrelated people that can live together (the most common restrictions fall in the three to five unrelated persons range).¹⁹⁵ Additionally, of these nine Pennsylvania counties, 22% include domestic servants in the definition of family and 16% exclude those occupying a boarding house, lodging house, club, group home,¹⁹⁶ fraternity, hotel, or similar living arrangement.

186. This includes Adams County, Pike County, Wayne County, Monroe County, Union County, Snyder County, Venango County, Crawford County, and Carbon County. These counties all participate in the Pennsylvania Department of Aging SHARE Program.

187. See e.g., TWP. OF BANKS, PA., ZONING ORDINANCE art. III (2020); IRWIN BOROUGH ZONING ORDINANCE art. II, § 260-9 (2014); BEAVER BOROUGH, PA., ZONING ORDINANCE § 27-202 (2012); CHESTNUTHILL TWP., PA., ZONING ORDINANCE art. II, § 119-21 (2019); TOBYHANNA TWP., PA., ZONING ORDINANCE art. IV, § 155-5 (1999).

188. See CONEWAGO TWP., PA., ZONING ORDINANCE art. I, § 155-13 (2009).

189. See FAIRFIELD TWP., PA., ZONING ORDINANCE art. II, § 2.2 (2007).

190. See BEAVER BOROUGH, PA., ZONING ORDINANCE § 27-202 (2013).

191. See CLINTON TWP., PA., ZONING ORDINANCE art. VII, § 185-80 (2015).

192. See ROSS TWP., PA., ZONING ORDINANCE § 27-202 (2018).

193. See PLAMYRA BOROUGH, PA., ZONING ORDINANCE art. I, § 380-13 (2015).

194. See CUMBERLAND TWP., PA., ZONING ORDINANCE § 27-201 (2013).

195. See e.g., *supra* notes 191–98.

196. Roughly 9% of these jurisdictions permit group homes in single-family zones so long as no more than eight people are living together with supervision. See e.g., TOBYHANNA TWP., PA., ZONING ORDINANCE art. IV, § 155-5 (1999); CUMBERLAND TWP.,

Interestingly, in metropolitan areas of the state, the definition of family is more restrictive than rural areas. For example, in Pittsburgh, family is defined as:

[T]wo (2) or more persons related by blood or marriage or adoption . . . or [a] group of not more than three (3) persons who need not be related by blood or marriage or adoption, living together as a single housekeeping unit . . . and shared common facilities as considered reasonably appropriate for a family related by blood, marriage or adoption.¹⁹⁷

Similarly, Philadelphia restricts family to three unrelated persons who are “living as a single household unit using housekeeping facilities in common.”¹⁹⁸ College towns like Lincoln, Nebraska can be even more restrictive, permitting no more than two unrelated persons to reside together in a single-family dwelling.¹⁹⁹

What is interesting about land use laws is that municipalities may define a family unit differently between single-family and multifamily zones. In other words, multigenerational households and unrelated households are often permitted in (i.e. relegated to) multifamily zoning districts, but have faced legal challenges to residing in single-family homes or neighborhoods. For example, in *Village of Belle Terre v. Boraas*, the Supreme Court upheld the village’s ordinance that prohibited no more than two unrelated persons from residing in a single-family dwelling by utilizing a rational basis review and found that there is no fundamental right to reside with unrelated people.²⁰⁰ Furthermore, in a win for multigenerational related households, the Supreme Court in *Moore v. East Cleveland* held that there was a Due Process violation when the municipality defined family in a way that excluded relatives from residing in the same household.²⁰¹ Despite there being no federal protections for unrelated households who seek to reside together in a single-family dwelling, state courts have also found Due Process violations when local governments restrict unrelated or functional family households.²⁰²

PA., ZONING ORDINANCE § 27-201 (2013); POLK TWP., PA., ZONING CODE art. III, § 400-303 (2020).

197. PITTSBURGH, PA. ZONING CODE art. IX ch. 926 (2019) (the ordinance does permit group homes that house up to eight unrelated disabled people to be considered a family for purposes of maintaining a single-family zoning use.)

198. PHILADELPHIA, PA. ZONING ORDINANCE § 14-102(49) (2012).

199. LINCOLN MUN. CODE ch. 5.38.020 (2020).

200. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7 (1974).

201. *Moore v. City of East Cleveland*, 431 U.S. at 494, 498–99 (1977) (distinguishing *Belle Terre* on the grounds of the sanctity of family and not extending those same protections to unrelated individuals).

202. *Compare Schwartz v. Phila. Zoning Bd. of Adjustment*, 126 A.3d 1032, 1044 (Pa. Commw. Ct. 2015) (declining to extend functional family protections under state law to those unrelated residents and upholding the constitutionality of the ordinance limiting residency to three unrelated persons), *with Baer v. Town of Brookhaven*, 73 N.Y.2d 942 (1989) (finding a state due process violation when

C. Restrictive Occupancy Codes

Local occupancy standards regulate not only how many people are permitted to reside in a residential dwelling, but also attempt to reach further into home dynamics to give guidance on how many people should be permitted to reside in each bedroom.²⁰³ This practice of regulating acceptable sleeping arrangements has been endorsed by the federal government in the form of its reasonable occupancy standards, which are embedded within rules surrounding housing quality inspection standards for participation in federal programs²⁰⁴ and a codified exemption to familial discrimination under the Fair Housing Act.²⁰⁵

The general industry standard for occupancy is two persons per bedroom, although HUD has not endorsed a particular definition of what constitutes a reasonable governmental occupancy restriction.²⁰⁶ In shared housing arrangements in a government-subsidized housing context, HUD mandates that private space must contain one bedroom for every two household members and the number of bedrooms may not be less than the assisted household unit size.²⁰⁷ Additionally, “[a] zero or one bedroom unit may not be used for shared housing.”²⁰⁸

From their origin, occupancy codes which purport to protect against “overcrowding” have been used to systematically target immigrant communities who often prefer to live in different cultural configurations.²⁰⁹ One rationale for the first occupancy standard from 1879 in New York City arose from a now debunked scientific belief that exhaled breath contained poisonous carbonic acids, and residents would drown unless there was 600 cubic feet of air space per person.²¹⁰ Although

functional families are treated differently than traditional families under zoning law).

203. See *e.g.*, VA. CODE ANN. § 36-105.4 (2013) (permitting owners to restrict occupancy to two persons per bedroom).

204. See 24 C.F.R. § 982.401(d)(2)(ii) (2023).

205. 42 U.S.C. § 3607(b)(1).

206. Iglesias, *supra* note 178, at 1261, 1251 (arguing that reasonable must also mean non-discriminatory and thus either a “reasonable balance” or “reasonable means-ends fit standard” must be used to determine whether the occupancy standard creates “incidental” or “substantial” discrimination). See *also* 63 Fed. Reg. 70982, 70983 (Dec. 22, 1998) (describing the Frank Keating Memo as formal policy on what factors to consider when examining whether occupancy standards are reasonable or violate the FHA. Factors to consider include: (1) size of bedrooms and unit; (2) age of children; (3) configuration of the unit; (other physical limits of housing); (4) state and local law; and (5) other relevant factors).

207. 24 C.F.R. § 982.618(d)(ii) (2023).

208. *Id.* § 982.618(d)(2)(iii).

209. See BOUDREAUX, *supra* note 149, at 41. (“The San Francisco Lodging House ordinance banned dwelling units that offered less than 500 cubic feet of living space (which works out to about 70 square feet for today’s houses); an impetus to the law was the Anti-Coolies Association, which fought the immigration of Chinese laborers who supposedly took low-paying jobs away from American-born citizens.”).

210. See Pader, *supra* note 162, at 308.

overcrowding is a health and safety concern, occupancy restrictions are more often motivated by “quality of life” issues such as noise, parking, and congestion.²¹¹ While its common for immigrant families to live in intergenerational households, many suburban communities instituted more restrictive occupancy standards in a direct attempt to preserve nuclear family values.²¹² Generally, courts and HUD have been deferential to local government’s ability to regulate internal density of dwellings through either minimum square footage per occupant or a maximum number of occupants per bedroom.²¹³

Occupancy codes have cultural implications which result in privileging particular cultural values around sleeping arrangements and shared space.²¹⁴ These regulations have an impact on larger households with greater than four members.²¹⁵ There is inconsistent scientific research on the relationship between overcrowding and health.²¹⁶ Researchers have found that factors other than household density are more important when aiming to ensure physical and mental health from a public policy perspective, including “physical environmental factors (e.g., confounding factors such as inadequate plumbing or roach infestation, or availability to outside areas), personal variables (e.g., perceived control, age), and social conditions (e.g., socioeconomic status, social support, ethnic background, institutional or residential context).”²¹⁷

Of course, the unprecedented COVID-19 pandemic presented respiratory transmission challenges for people who resided closely together in overcrowded areas.²¹⁸ However, many people adapted to this public health concern by implementing a “pod” system of social distancing

211. See Iglesias, *supra* note 178, at 1257.

212. Daniel Eduardo Guzman, *There Be No Shelter Here: Anti-Immigrant Housing Ordinances and Comprehensive Reform*, 20 CORNELL J. L. & PUB. POL’Y 399, 414-22 (2010).

213. *Compare* Fair Hous. Advocates Ass’n v. City of Richmond Heights, 998 F. Supp. 825, 830 (N.D. Ohio 1998) (finding that occupancy codes capping the number of occupants per dwelling based upon minimum square footage requirements are deemed a reasonable exercise of government police power for purposes of qualifying for the FHA exemption), *with* Briseno v. City of Santa Ana, 8 Cal. Rptr. 2d 486, 488 (1992) (holding that the California Uniform Housing Code which outlines occupancy standards preempts any local ordinance unless “local climatic, geological, or topographical conditions” justify a local change).

214. See Pader note 162, at 302.

215. *Id.*

216. See Ahrentzen, *supra* note 121, at 549–50.

217. *Id.* at 549.

218. Researchers from the World Bank actually found no significant causality between density and the spread of COVID-19. Overcrowding, in housing units or public spaces like places of worship and public transportation do play a role in transmission. See Yu Zhong & Bertrand Teirlinck, *Density and its Effect on COVID-19 Spread*, N.Y. CITY ECON. DEV. CORP., <https://edc.nyc/insights/density-and-its-effect-on-covid-19-spread> [<https://perma.cc/PD72-GCS3>] (last visited Sept. 25, 2023).

and wearing masks.²¹⁹ Certain cultural values such as individualism and privacy, which stem from a white male Anglo-Saxon upper-class privileged moral lens, form the basis of modern occupancy codes.²²⁰ However, there is a movement underfoot to elevate the values of sharing and interdependency “as equally legitimate as the preference for privacy.”²²¹

D. Impact on Taxes & Benefits Eligibility

Older homeowners can be motivated to home share for financial reasons.²²² Economic constraints impact those who live alone as they tend to have less diverse income streams, fixed income, or a lack of multiple residents with whom to pull resources with.²²³ Individual supplemental security income recipients who live alone experience higher poverty rates.²²⁴ While the majority of those sixty-five and older own their home, households of color have lower rates of homeownership.²²⁵ Shared housing arrangements have implications for both homeowners’ property taxes, income tax liability, and public benefits eligibility.²²⁶

As a domain of local government, real property is taxed at a certain percentage of its assessed value.²²⁷ The higher the assessed value, the greater amount of taxes a homeowner will pay. One way that a home increases in value is through improvements, such as the addition of an accessory dwelling unit or through conversion to a distinct shared housing zoning use or conversion from office space to residential housing.²²⁸ Those homeowners interested in participating in a shared housing arrangement should be aware that if the space is improved or

219. Kara Gavin, *How to Keep COVID-19 From Invading Your “Pod” – and How to Stay Safe if It Does*, MICH. MED., UNIV. OF MICH. (Oct. 13, 2020, 8:37 AM), <https://www.michiganmedicine.org/health-lab/how-keep-covid-19-invading-your-pod-and-how-stay-safe-if-it-does> [https://perma.cc/WS5G-3E8C].

220. Pader, *supra* note 162, at 310.

221. *Id.* at 314.

222. See Martinez et al., *supra* note 130, at 6.

223. See RENE STEPLER, PEW RSCH. CTR., *SMALLER SHARE OF WOMEN AGES 65 AND OLDER ARE LIVING ALONE 16–17* (2016).

224. Melissa Koenig & Kalman Rupp, *SSI Recipients in Households and Families with Multiple Recipients: Prevalence and Poverty Outcomes*, 65 SOC. SEC. OFF OF POL’Y, no. 2, 2003-2004, at 14.

225. Roughly 81% of white sixty-five plus persons own a home versus 61% of black sixty-five plus households. See JOINT CTR. FOR HOUS. STUDIES OF HARV., *THE STATE OF THE NATION’S HOUSING 2021*, UNIVERSITY 23 fig. 23 (2021), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf [https://perma.cc/D8VH-B8Y7].

226. See Mary Ann Hofmann, *Tax Treatment of Home-Sharing Activities*, THE CPA J. (November 2019), <https://www.cpajournal.com/2019/11/11/tax-treatment-of-home-sharing-activities/> [https://perma.cc/NH3B-3WKC].

227. See *e.g.*, 53 PA. CONS. STAT. § 8563 (2012).

228. See Press Release, *Mayor Adams Unveils Recommendations to Convert Underused Offices into Homes* (Jan. 9, 2023), <https://www.nyc.gov/office-of-the-mayor/>

converted to shared use, it could trigger a higher property tax rate depending upon the rules of the municipality or state.

Many states like Pennsylvania offer property tax rebate programs targeted towards older adults or those with limited income or disabilities.²²⁹ Currently, those in Pennsylvania who are sixty-five and older or widowers fifty and older²³⁰ with an income of \$45,000 a year or less are eligible for a rebate.²³¹ Some renters also qualify.²³² In order to account for inflation and increases in the cost of living, the Pennsylvania legislature passed a recent bill which raised the income eligibility level from \$35,000 to \$45,000 for the state property tax rebate program.²³³ Other tax relief for older residents is also available in Philadelphia through a real estate tax freeze and in Pittsburgh through a thirty percent discount rate.²³⁴

In addition to potential implications on real estate taxes, if a home share hosts decides to rent a room to a home seeker, this additional rental income could threaten the home share hosts ability to benefit from certain public benefits or social services if it sufficiently raises their income beyond program eligibility limits.²³⁵ Interesting, Pennsylvania's Supplemental Nutrition Assistance Program (SNAP) program rules distinguish between rental income and room rent when determining income eligibility.²³⁶ Profit from rental property is considered earned income only if the owner actively manages the property at least twenty hours a week.²³⁷ Income from renting a room, like in a home share arrangement, "is considered earned self-employment

news/022-23/mayor-adams-recommendations-convert-underused-offices-homes [https://perma.cc/ZYE6-HX8A].

229. *See e.g.*, 53 PA. Const. Stat. § 6926.1301 (2006).

230. *Id.* § 1303(1)-(2).

231. *Id.* § 1304.

232. *Id.* (Eligible renters making less than \$45,000 annually also qualify).

233. Tax Relief Act, H.B. 1100, Gen. Assemb. Reg. Sess., P. L. 29 No. 7 (Pa. 2023).

234. *See* CITY OF PA, *Apply for the low-income senior citizen Real Estate Tax freeze* (Jan. 19, 2023), <https://www.phila.gov/services/payments-assistance-taxes/payment-plans-and-assistance-programs/income-based-programs-for-residents/apply-for-the-low-income-senior-citizen-real-estate-tax-freeze/> [https://perma.cc/UK3Q-6AH3]; ALLEGHENY CNTY., OFF. OF TREASURER, PRIMARY RESIDENCE TAX DISCOUNT (2023), <https://allegHENYCOUNTYTreasurer.us/real-estate-tax/real-estate-tax-2/> [https://perma.cc/W9VB-KZPA].

235. Generally, income qualification levels for public benefit programs such as SNAP, energy, emergency assistance, utility discounts, etc. ranges from 150-250% of the federal poverty guidelines which is \$21,870 to \$36,450 for a household of one. *See* 2023 POVERTY GUIDELINES: 48 CONTIGUOUS STATES (ALL STATES EXCEPT ALASKA AND HAWAII) 1 (2022), <https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf> [https://perma.cc/4UZP-BRLV].

236. *See* 550.2 *Earned Income*, SNAP HANDBOOK (March 1, 2012), http://services.dpw.state.pa.us/oimpolicymanuals/snap/index.htm#t=550_Income%2F550_2_Earned_Income.htm [https://perma.cc/FJT4-AMP7].

237. *Id.*

income” which may not be subject to the same favorable deductions as rental income.²³⁸ Additionally, the federal SNAP regulations permit “roomers” to participate in the SNAP program as a separate household.²³⁹ In 1973, the Supreme Court in *U.S. Department of Agriculture v. Moreno* held that previous USDA legislation which categorically excluded unrelated households from eligibility in the program was unconstitutional.²⁴⁰ Lastly, rental income would be subject to tax liability under both state and federal taxes.²⁴¹

E. Landlord-Tenant Protections

When it comes to landlord tenant protection, shared housing models that employ a valid written lease are afforded much more protection under landlord-tenant law than informal shared housing agreements.²⁴² Informal arrangements lack a written shared use agreement and are often illegal because they violate zoning, occupancy, and health and safety codes.²⁴³ This inferior status as non-tenant residential occupant excludes many informal shared housing dwellers from landlord tenant protections, including the warranty of habitability. This leaves occupants with no recourse against self-help evictions by landlords.²⁴⁴

There are multiple ways to share housing. The most common way is between a homeowner who lives onsite and a home seeker who is a renter of a room at the property.²⁴⁵ In another model, two home seekers could decide to share housing and rent from a third-party to become

238. *Id.*

239. 7 C.F.R. § 273.1(b)(5) (2019).

240. U. S. Dep’t of Agric. v. Moreno, 413 U.S. 528, 544-45 (1973).

241. See 61 PA. CODE § 101.8(c) (1972). See also *Rental Income and Expenses - Real Estate Tax Tips*, INTERNAL REVENUE CODE (Feb. 10, 2023), <https://www.irs.gov/businesses/small-businesses-self-employed/rental-income-and-expenses-real-estate-tax-tips#:~:text=You%20generally%20must%20include%20in,the%20year%20you%20pay%20them> [<https://perma.cc/NC2U-USYH>] (explaining that rental income must be included in an individual’s gross income).

242. See PA. OFF. OF ATT’Y GEN., CONSUMER GUIDE TO TENANT AND LANDLORD RIGHTS 6 (2022) (both written and oral leases are legally binding under Pennsylvania law, but “a written lease signed by both parties provides the best protection.”).

243. Mekonnen Firew Ayano, *Tenants without Rights: Situating the Experiences of New Immigrants in the U.S. Low-Income Housing Market*, 28 GEO. J. ON POVERTY L. & POLY 159, 188 (2021).

244. Matthew P. Main, *An Unqualified Prohibition of Self-Help Eviction: Providing a Right to Court Process for All Residential Occupants*, 43 CARDOZO L. REV. 2205, 2258 (2022).

245. Nicole Gurran et al., *Discounted housing? Understanding shared rental markets under platformisation*, HOUS. STUDIES 4 (2023) (describing owner-occupied shared housing as “lodging arrangements”).

housemates.²⁴⁶ In both cases, all parties could be protected by state landlord tenant laws.²⁴⁷

The reach of those protections may differ depending upon the formality of the arrangement. Shared housing dwellers who are classified as lessees pursuant to a formal written agreement, generally have a right for the premises to be habitable and to live in safe and sanitary conditions.²⁴⁸ The extension of this warranty of habitability through the time of the occupancy may be difficult for aging home sharers, which is why it may be desirable to outline which occupant is responsible for maintenance and upkeep of the property.²⁴⁹ In other words, if the senior home owner is sharing their home with a home seeker tenant and the senior “landlord” does not maintain the home in a suitable fashion, they could be liable under landlord-tenant law.²⁵⁰

Additional items that should be negotiated as part of a shared living arrangement or lease includes who is paying for utilities, whether a security deposit will be required, and which space is to be shared versus which spaces will remain private. Spatial use agreements are important because the right to privacy transcends both informal and formal shared living arrangements.²⁵¹ For example, in *State v. Coles*,

246. *Id.*

247. *See e.g.*, VA. CODE ANN. § 55.1-1200 (2021) (includes “roomer[s]” within the definition of tenants for purposes of the statute).

248. *See* PA. OFF. OF ATT’Y GEN., *supra* note 242, at 8.

249. For example, under Pennsylvania law, the implied warranty of habitability requires maintenance of a safe and sanitary dwelling that has “adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.” *Pugh v. Holmes*, 405 A.2d 897, 902 (Pa. 1979). *See also* Cara Bailey Fausset et al, *Challenges to Aging in Place: Understanding Home Maintenance Difficulties*, 25 J. HOUS. ELDERLY 125, 130 (2011) (16% of home maintenance tasks which were identified as difficult by aging homeowners included HVAC maintenance, replacing light bulbs, pest control, roof replacement, and smoke alarms and carbon monoxide detectors maintenance).

250. For example, under Nebraska law, a landlord is required to comply with local housing codes, make repairs, ensure all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other appliances are functioning in a safe manner, arrange for waste disposal services, supply running water, and reasonable hot water and heat. *See* NEB. REV. STAT. § 76-1419 (Reissue 2001) (noting that some of the landlord’s duties under the statute can be delegated to the tenant if there is prior written agreement). If a landlord fails to maintain the premises, tenants are entitled to terminate their lease and the tenant may be entitled to damages and attorney’s fees. *See id.* § 76-1425.

251. *See* *Minnesota v. Olson*, 495 U.S. 91, 93–100 (1990) (a place need not be one’s “home” to claim protection from unreasonable search under the Fourth Amendment. Even overnight guests have legitimate privacy interests in the home they are visiting, despite having no legal claim to the premises and no legal authority to determine who enters). For an example of a room rental agreement, *see e.g.*, UNIV. OF CAL. SANTA CRUZ CMTY. RENTALS, Room Rental Agreement: Shared Housing (2017), <https://communityrentals.ucsc.edu/pdf/rental-agreement-room.pdf> [<https://perma.cc/RU2D-YBGQ>] (providing space for the parties to articulate

the court held that a landlord cannot consent to a search of a tenant's separate room.²⁵²

F. Limited Fair Housing Protections

Although the Fair Housing Act (FHA) and its state counterparts prohibit discrimination in the rental of a housing unit,²⁵³ the configuration of many shared housing arrangements precludes its occupants from protection against discrimination.²⁵⁴ Known as the “Mrs. Murphy” exemption due to the limitation of the statute’s reach to boardinghouses,²⁵⁵ the FHA does not apply to owner-occupied buildings with four units or less that are occupied by “families living independently of each other.”²⁵⁶ Similarly, the Pennsylvania Human Relations Act (PHRA) does not apply to owner-occupied personal residences with two units or less.²⁵⁷ Additionally, a single-family house rented by the homeowner without an agent is exempt from all the provisions of the FHA except for Section 3604(c) discriminatory advertisements.²⁵⁸

With the limitations of the FHA, in many instances, home share programs will be exempt due to their small number of units and the fact that many arrangements are with homeowners themselves who reside onsite.²⁵⁹ Furthermore, the 9th Circuit Court of Appeals has held that the FHA does not apply to housemates in “shared living situations” (without defining this term) and roommates can discriminate in the selection of who they would like to live with.²⁶⁰ However, although an individual roommate may discriminate in their search for a housemate, a landlord who leases multiple units not eligible for the FHA exemptions cannot. The U.S. District Court for the District of Utah in *Haws v. Norman* distinguished *Roommate.com* on the grounds that while

household rules for shared space and highlighting privacy expectations for each tenant’s rooms).

252. *State v. Coles*, No. A-2954-10T2, 2012 WL 1192053, at *15 (N.J. Super. Ct. App. Div. Apr. 11, 2012), *aff’d as modified*, 218 N.J. 322, 95 A.3d 136 (2014).

253. 42 U.S.C. §§ 3601–3619, 3631 (2011); 43 PA. STAT. AND CONS. ANN. § 955(h)(1)–(11) (West 2023).

254. *See Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1122–23 (9th Cir. 2012) (holding that the Fair Housing Act (and the California state equivalent act) does not apply to shared dwelling units and it is lawful for people to discriminate in the selection of a roommate).

255. *See* 114 CONG. REC. 2495, 3345 (1968).

256. 42 U.S.C. § 3603(b)(2).

257. 43 PA. STAT. AND CONS. ANN. § 954(i), (k) (West 2023).

258. 42 U.S.C. § 3603(b)(1).

259. *See* 42 U.S.C. § 3603(b)(1)–(2).

260. *See Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1120 (9th Cir. 2012).

individual roommates may discriminate in selection of roommates, landlords who rent shared living units are not exempt from the FHA.²⁶¹

In shared living arrangements, the FHA also begins to intersect with jurisprudence on the freedom of association and privacy rights. The right of the freedom of association is important to consider in the context of shared living arrangements. The 9th Circuit reasoned in *Roommate.com* that interpreting the FHA to apply to roommate selection would conflict with the constitutional right to free association and the FHA should “stop the FHA at the front door.”²⁶² Some scholars have criticized the 9th Circuit’s *Roommate.com* decision as being “poorly reasoned, weakly supported, and poorly drafted” in addition to being overbroad.²⁶³ For example, professor Iglesias forecasted that the *Roommate.com* decision would “be a potential problem for municipalities’ regulation of unrelated persons in ‘single-family zones.’”²⁶⁴ The 9th Circuit’s overly broad pronouncement that all roommate relationships are sufficiently intimate to warrant freedom of association protection conflicts with 1974 Supreme Court precedent that forms the basis of zoning law in many states.²⁶⁵

Under *Village of Belle Terre v. Boraas*, the Supreme Court held that unrelated occupants had no constitutional right to reside together, and municipalities could enforce restrictive zoning ordinances which are subject only to a rational basis review.²⁶⁶ Professor Iglesias argues that the court’s framing of all roommate relationships as those of “intimate companion” based on the reduction of privacy in shared living arrangements is overly broad and creates maximum constitutional conflict with the statutory provisions of the FHA; thus, undercutting its effect and purpose.²⁶⁷ Conversely, Professor Oliveri take issue with *Belle Terre* itself, making the argument that it conflicts with the court’s modern privacy jurisprudence and argues for anyone (unrelated or not) in co-residence to be entitled to constitutional association protections.²⁶⁸

Oliveri’s arguments implicate that unrelated shared housing roommates are entitled to discriminate, but landlords or housing providers themselves should remain subject to FHA antidiscrimination

261. *Haws v. Norman*, No. 2:15-CV-00422-EJF, 2017 WL 4221064, at *10 (D. Utah Sep. 20, 2017).

262. *Roommate.com*, 666 F.3d at 1220.

263. Tim Iglesias, *Does Fair Housing Law Apply to “Shared Living Situations”? Or the Trouble with Roommates*, 22 J. OF AFFORDABLE HOUS. & CMTY. DEV. L 112, 113 (2014).

264. *Id.* at 113.

265. *Id.* at 136.

266. *Compare* *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7–8 (1974), *with* *Moore v. City of East Cleveland*, 431 U.S. 494, 498–99 (1977) (stating related people do have a constitutional right to live together and any governmental attempts to restrict this are subject to strict scrutiny analysis).

267. Iglesias, *supra* note 263, at 133.

268. Oliveri, *supra* note 143, at 1429.

provisions.²⁶⁹ Again, in shared housing arrangements, the line between housing provider and roommate can become blurred. Professor Iglesias recommends that fair housing restrictions should apply to any landlord-tenant relationship. Also, those who seek an intimate roommate relationship in a shared living arrangement could advertise by word of mouth or in personal ads so that they can express personal preferences in the proper forum without being subject to fair housing requirements.²⁷⁰ All other roommate relationships can be advertised through standard channels, but the roommate should not express discriminatory preferences or discriminate in the selection of their roommate.²⁷¹

In advertising formal home share programs, organizations should not exclude those in protected classes from applying. However, in the often labor-intensive matching process, folks can be deemed ineligible to participate based on a history of substance abuse, certain criminal records, lack of financial stability, their current residence being deemed unsafe or unsanitary, and whether or not they own their residence.²⁷² Certainly, since organizations have such broad discretion during the matching process, bias can manifest as a determination that someone is not an “ideal fit” for the program.²⁷³ Good fit ordinarily entails things such as lifestyle habits and preferences which can also include personal history and identity.²⁷⁴ Identities could include protected classes such as gender and families with children and non-protected classes such as those with pets or smokers.²⁷⁵ These ineligibility categories could have the effect of excluding large segments of the population from a formal home share program, including applicants of color who have higher rates of incarceration and less generational wealth or poor credit scores.²⁷⁶ Organizations should strive to put processes in place that address any tensions between finding the “right match” and promoting anti-discriminatory eligibility and screening policies.

One final FHA exemption is worth considering as many shared housing arrangements are targeted towards or intended to benefit older persons.²⁷⁷ If shared housing was created pursuant to a specific state or federal program, it is conceivable that it could be eligible as

269. *Id.* at 1451.

270. Iglesias, *supra* note 263, at 146.

271. *Id.*

272. Magid et al., *supra* note 111, at 820.

273. *See id.* at 821.

274. *See id.*

275. Under the Fair Housing Act, protected classes include race, color, religion, sex, familial status, national origin and handicap. *See* 42 U.S.C. § 3604(a), (c).

276. Abby Boshart, *How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing*, URB. INST. (Dec. 21, 2022), <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing> [<https://perma.cc/QJK9-7QKE>].

277. *See* Martinez et al., *supra* note 130, at 2.

Housing for Older Persons which would exempt it from familial status liability under the FHA.²⁷⁸ In order to maintain this exemption, it would have to be solely occupied by persons sixty-two years and older or operated and intended for persons fifty-five years and older with eighty percent of the units occupied by at least one household member fifty-five years and older.²⁷⁹

VI. LACK OF FINANCING & FUNDING OPTIONS

There are several challenges with financing shared housing. First, there is a lack of funding for formal home-share organizations and programs. Second, there are issues relating to financing the shared housing. Home share organizations may be funded through a patchwork of foundation funding, government funding, community development block grants, private donations, events, fees, or parent organization funds.²⁸⁰ Since volume is not a goal of shared housing matching, it is often difficult to garner investor or philanthropic interest in a resource and labor-intensive program that does not always result in thousands of matches.²⁸¹ Home share programs require significant human capital resources and often there are not enough people on staff to meet the demand.²⁸² Currently in Pennsylvania, funding for their Department of Aging's SHARE Program was secured through a Money Follows the Person (MFP) grant from the Centers for Medicare and Medicaid Services (CMS) and is currently in a pilot stage.²⁸³

The second challenge is for home seekers and home sharers to obtain financing to purchase, mortgage, or rent a dwelling for purposes of shared living.²⁸⁴ There is some federal funding available to subsidize rent in shared housing units for eligible low-income tenants. HUD includes shared housing as a special housing type under its public housing program.²⁸⁵ HUD's Housing Choice Vouchers (HCVs), which are administered by public housing agencies, may be used to pay a landlord in a shared housing arrangement.²⁸⁶ HUD has also suggested

278. See 24 C.F.R. § 100.300 to .308 (2023).

279. *Id.* § 100.303 to .305.

280. *Id.* at 823.

281. See *id.*

282. See Magid et al., *supra* note 111, at 826–27.

283. PA. DEP'T OF AGING, *supra* note 173, at 15.

284. Recognizing the challenges to financing smaller developments in rural areas, the Biden Administration reinstated the Section 542(c) Housing Finance Agency Risk-Sharing Program in 2021. See Donna Kimura, *White House Announces Steps to Increase Affordable Housing*, AFFORDABLE HOUS. FIN. (Sept. 2, 2021), https://www.housingfinance.com/policy-legislation/white-house-announces-steps-to-increase-affordable-housing_o [<https://perma.cc/X7JJ-QYT4>].

285. 24 C.F.R. § 982.601(a)(4).

286. See generally U.S. DEP'T OF HOUS. & URB. DEV., *USE OF SHARED HOUSING IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM* (2021). In 2004, Homeshare Care received a HUD grant to provide a voucher-like rental stipend as part of its homeshare

that in some markets like California, home sharing programs that accept HCVs have resulted in higher HCV utilization rates than the standard landlord rental market.²⁸⁷ HUD notes in its guidance to public housing agencies that shared housing can be a “viable option for families seeking economical housing under various market conditions,” including markets with few apartment rentals and “a prevalence of single-family housing.”²⁸⁸ HUD defines shared housing options that are eligible for use with HCVs as for-profit co-living, for-profit shared housing matching, and non-profit shared housing.²⁸⁹

There are some limitations on how the HCV is administered in sharing housing. An owner who resides onsite at the shared housing unit cannot be related to the assisted family by blood or marriage.²⁹⁰ In order to qualify for tenant-based public housing rental assistance, the entire shared housing dwelling must meet HUD’s Housing Quality Standards.²⁹¹ In shared housing, HUD requires that assisted families have access to “a living room, . . . [bathroom], . . . food preparation and refuse disposal facilities,”²⁹² and private non-shared space must contain at least one bedroom for every two people in the assisted family.²⁹³ These occupancy requirements mean that for an assisted family that is comprised of a married couple with a two year-old child, at least two bedrooms must be provided to the assisted couple for the shared housing arrangement to meet HUD’s occupancy requirements (resulting in the need for a three bedroom shared housing unit).

In order for shared housing arrangements to be accommodated from existing housing stock, some rehabilitation might be necessary.²⁹⁴ Furthermore, in order for older adults to age successfully in place and accommodate a home-share situation, additional modifications may be necessary.²⁹⁵ Home renovations to facilitate shared housing opportunities might be eligible for funding under the Federal Housing

program. See *Homeshare Program*, SHARED HOUS. CTR. INC., <https://www.shared-housing.org/homeshare.html> [<https://perma.cc/B9RT-8BPV>] (last visited May 30, 2023).

287. See *Home Sharing*, U.S. DEP’T OF HOUS. & URB. DEV., OFF. OF POL’Y DEV. & RSCH., <https://www.huduser.gov/portal/casestudies/study-09282016-1.html> [<https://perma.cc/D6QV-FLY6>] (last visited May 30, 2023).

288. U.S. DEP’T OF HOUS. & URB. DEV., USE OF SHARED HOUSING IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM (2021).

289. U.S. DEP’T OF HOUS. & URB. DEV., USE OF SHARED HOUSING IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM (2021).

290. 24 C.F.R. § 982.615(b)(3) (2015).

291. *Id.* § 982.618(a).

292. *Id.* § 982.618(c).

293. *Id.* § 982.618(d)(2)(ii).

294. *Housing Quality Approaches*, RURAL HEALTH INFO. HUB, <https://www.ruralhealth-info.org/toolkits/sdoh/2/built-environment/housing-quality> [<https://perma.cc/N2XC-WRXE>] (last visited Sept. 25, 2023).

295. See HOUS. ASSISTANCE COUNCIL, HOUSING AN AGING RURAL AMERICA: RURAL SENIORS AND THEIR HOMES 26 (2014).

Administration 203(k) program or the HOME Investment Partnerships Program.²⁹⁶ Under the 203(k) program, borrowers finance the cost of rehabilitation through a single mortgage where the rehabilitation costs are at least \$5,000.²⁹⁷ The 203(k) renovation loan insured by the Federal Housing Administration is a financing tool that can be used for development or conversion of ADUs as well.²⁹⁸ Another option is the HomeStyle loan guaranteed by Fannie Mae²⁹⁹ or the American Rescue Plan funds, which have also been used for home repair and rehabilitation.³⁰⁰ Despite few governmental options, it remains difficult for owners to secure traditional, lower-rate construction or mortgage loans for shared housing because lenders might not be willing to underwrite based on the divergent model and potential unaligned property appraisal based on lack of comparable units.³⁰¹

In a shift towards recognizing intergenerational household configurations, HUD set aside \$15 million of its 2022 Section 202 Supportive Housing for the Elderly to assist projects that fund housing programs with grandparents or elderly relatives raising children.³⁰² Typically, the 202 program requires that project units be efficiencies or one-bedroom units.³⁰³ Also, applications for intergenerational funding must have at least two separate bedrooms in the unit.³⁰⁴ Program funding priority is

296. See 24 C.F.R. § 203.50 (2019).

297. *Id.* § 203.50; 203(K) *Rehab Mortgage Insurance*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/housing/sfh/203k/203k—df [<https://perma.cc/VGX9-NVBV>] (last visited May 30, 2023) (discussing rehab mortgage insurance and eligible activities).

298. See *Federal Housing Administration Seeks Feedback on Proposed Changes to Increase Access to Affordable Financing for Properties with Accessory Dwelling Units*, U.S. DEP'T OF HOUS. & URB. DEV. (April 13, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_075 [<https://perma.cc/NKZ4-F9T4>] For a draft Mortgagee Letter, see U.S. DEP'T OF HOUS. & URB. DEV., CONSIDERATION OF ACCESSORY DWELLING UNIT RENTAL INCOME (2003), https://www.hud.gov/sites/dfiles/SFH/documents/sfh_adu_market_rent_draft_ml_04_13_23.pdf [<https://perma.cc/CX8J-KBS3>].

299. *HomeStyle Renovation Mortgage*, FANNIE MAE (2022), <https://singlefamily.fanniemae.com/media/8271/display> [<https://perma.cc/QXX9-3RP3>].

300. \$125 million of Pennsylvania ARPA funds are allocated toward awarding \$50,000 grants to landlords and homeowners to address property habitability and efficiency. See *COVID-19 ARPA Whole-Home Repairs Program*, PA. DEP'T OF COMTY. & ECON. DEV., <https://dced.pa.gov/programs/covid-19-arpa-whole-home-repairs-program/> [<https://perma.cc/8255-TW3K>] (last visited May 30, 2023); *Single Family Housing Repair Loans & Grants in Pennsylvania*, U.S. DEP'T OF AGRIC., <https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-repair-loans-grants/pa> [<https://perma.cc/6QTX-85TT>] (last visited May 30, 2023).

301. ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 17.

302. U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF HOUS., FY 2022 SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM, NOTICE OF FUNDING OPPORTUNITY 11 (2023) [hereinafter HUD SECTION 202 NOFO].

303. 24 CFR § 891.210(a) (2013).

304. *Id.* § 891.210(b).

given to those projects with greater than five intergenerational units or more than twenty percent of the assisted units being designated as intergenerational.³⁰⁵ Despite 202 program funding rising slightly in 2022 since 2021, only thirty-five projects will be awarded funds, leaving plenty of funding need for intergenerational and shared housing projects.³⁰⁶

As previously discussed, LIHTCs are the primary vehicle for financing affordable housing. However, rural developments are at a distinct disadvantage primarily from a density standpoint.³⁰⁷ Under U.S. Treasury regulations, a LIHTC unit is defined as “any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation.”³⁰⁸ All of these facilities must be “separate and distinct” from other apartments in order to qualify for LIHTCs.³⁰⁹ Accordingly, shared housing, which often relies on joint use facilities for eating, cooking, and bathing activities, would not be an eligible housing unit for inclusion in the LIHTC program.³¹⁰ There is an exception given for SROs,³¹¹ although few LIHTC developments have included SROs since their decline and demolition began in the 1960s.³¹²

VII. REGULATORY REFORM AND POLICY CHANGES

How can the law play a role in influencing value change to embrace shared housing? Local regulations are in many ways a codification of community values.³¹³ Community planning, design and development are overlaid onto this value structure and are influenced by access to resources.³¹⁴ Lending or funding resources that come from financial institutions and governmental entities are guided in part by state and federal housing policies which are influenced by experience and values.³¹⁵ In order to help catalyze a shift in the treatment of shared

305. HUD SECTION 202 NOFO, *supra* note 302, at 18.

306. *Id.* at 11.

307. See FREDDIE MAC MULTIFAMILY, *supra* note 58, at 1.

308. 26 C.F.R. § 1.103-8(b)(8)(i) (2011).

309. *Id.*

310. *See id.*

311. 26 U.S.C. § 42(i)(3)(B)(iv) (2020).

312. See Jake Blumgart, *SRO Housing, Nearly Zoned Out of Existence, Could Re-Emerge*, GOVERNING (June 8, 2022), <https://www.governing.com/community/sro-housing-nearly-zoned-out-of-existence-could-re-emerge> [https://perma.cc/TG8N-5FG3].

313. David Walters, *How Zoning Reveals Our Deeper Cultural Values*, UNC CHARLOTTE URB. INST. (June 2, 2015), <https://ui.charlotte.edu/story/how-zoning-reveals-our-deeper-cultural-values> [https://perma.cc/B2NX-35X4].

314. See Katy Shackelford & Wendy Van Duyne, *Increasing Capacity and Funding for Rural Communities*, NAT'L LEAGUE OF CITIES (June 13, 2022), <https://www.nlc.org/article/2022/06/13/increasing-capacity-and-funding-for-rural-communities/> [https://perma.cc/6Z7A-UYTW].

315. Morris A. Davis et al., *The Impact of Federal Housing Policy on Housing Demand and Homeownership: Evidence from a Quasi-Experiment*, 48 J. HOUS. ECON. 1–2 (2020).

housing, we need more folks “to see and experience shared housing [models] in their communities” to create an opportunity for change in values.³¹⁶

At the local level, legal impediments to shared housing can be alleviated through zoning, land use, and occupancy regulation modernization.³¹⁷ In addition to local or state regulatory reform, policy reforms that incentivize shared housing through additional funding and shared equity financing methods would open this housing opportunity to a greater swath of the population, including those with less income.³¹⁸ When we legalize the mechanisms that support shared housing, and it no longer remains in the shadows as hidden housing, we can begin to socialize and educate folks on this way of living as an option.

A. Land Use Regulation Modernization

Municipalities should permit multiple household homes in single-family zones. As previously discussed, single-family zones make up the bulk of zoning types in many areas and yet there is undercrowding and underutilized land potential to host multiple residents.³¹⁹ Rethinking or eliminating single-family zoning is one option. Scholars have argued that “the law should look for places to remove land use restrictions.”³²⁰ Restrictive land use and zoning regulations have been linked to higher housing prices.³²¹ Land use restrictions that exclude unrelated folks from residing together in a single-family dwelling are antiquated and disconnected from current patterns of modern living.³²²

Beyond opening up single-family zones to more unrelated folks or multiple households, we should also rethink whether there are more uses that should be permitted in single-family zones. Residential conversion to allow for shared use or even the addition of an accessory

316. UNDER ONE ROOF, *supra* note 9, at 132.

317. See Solomon Greene & Jorge González-Hermoso, *How Communities are Rethinking Zoning to Improve Housing Affordability and Access to Opportunity*, URB. INST. (June 12, 2019), <https://www.urban.org/urban-wire/how-communities-are-rethinking-zoning-improve-housing-affordability-and-access-opportunity> [https://perma.cc/2MCG-Y5DH].

318. See Shared Equity Models Offer Sustainable Homeownership, U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF POL'Y DEV. & RSCH. (Fall 2012), <https://www.huduser.gov/portal/periodicals/em/fall12/highlight3.html> [https://perma.cc/4UJD-YNUH].

319. See Adcock, *supra* note 12. See generally GROWTH OF SOLE PERSON HOUSEHOLDS, *supra* note 4.

320. BOUDREAUX, *supra* note 149, at 196.

321. Edward L. Glaeser & Joseph Gyourko, *The Impact of Building Restrictions on Housing Affordability*, 7 WHARTON REAL EST. REV. 5–14 (2003).

322. See generally, Bella DePaulo, HOW WE LIVE NOW: REDEFINING HOME AND FAMILY IN THE 21ST CENTURY (2015) (discussing types of modern living arrangements, including extended families living together, unrelated friends residing together, single parents pooling their resources to live together, co-living arrangements, couples living separately and maintaining their own separate homes, and single-person households).

dwelling unit is often illegal in single-family zones, although that is changing as more jurisdictions adopt ADU laws.³²³ Occupancy limits or owner-occupant requirements should also be reexamined through the lens of varied cultural norms. Permitting higher occupancy limits and greater density in single-family zones would allow for utilizing existing housing stock through more shared housing arrangements.³²⁴ Construction industry technological advancements have had a major impact on housing design such that “it is now possible to build dense housing with lowered minimum unit sizes without creating unsafe and unsanitary habitation.”³²⁵

The American Planning Association (APA) recommends reducing limits on multi-household density, minimum dwelling unit sizes, or maximum dwelling units per acre in favor of focusing more on form, size, and placements of these multi-household structures to allow for greater equity in zoning.³²⁶ The APA also recommends expanding residential use types to include missing middle housing which “is more available to America’s diverse, aging population.”³²⁷ This missing middle housing includes “cottage or courtyard dwellings, duplexes, triplexes, fourplexes, attached single-household homes (townhouses or stacked townhouses), co-housing, tiny houses, live-work dwellings, single-room occupancy (SRO), manufactured/modular housing, and both attached and detached accessory dwelling units (ADUs).”³²⁸ Other ways that municipalities can help promote shared housing is through streamlined approval processes for conversions and by eliminating special permitting requirements and fees.³²⁹ However, removing regulatory barriers absent other financial support and incentives will not be enough and may continue to further race and income-based disparities.³³⁰

323. Eight states including California, Connecticut, Maine, New Hampshire, Oregon, Utah, Vermont and Washington have state-wide ADU laws on the books. See Emily Hamilton & Abigail Houseal, *A Taxonomy of State Accessory Dwelling Unit Laws*, MERCATUS CTR. (Mar. 30, 2023), <https://www.mercatus.org/research/policy-briefs/state-accessory-dwelling-unit-laws#:~:text=This%20law%20left%20localities%20with,dwelling%20unit%20or%20the%20ADU> [https://perma.cc/TY2Q-EA47].

324. AM. PLAN. ASS’N, EQUITY IN ZONING POLICY GUIDE 18–20 (2022).

325. See ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 3 (mentioning updates to fireproofing, ventilation and public health as factors for increase in dense housing).

326. AM. PLAN. ASS’N, *supra* note 324, at 20.

327. *Id.* at 22.

328. *Id.*

329. See e.g., CENT. MASS. REG’L PLAN. COMM’N, LITERATURE REVIEW FOR STREAMLINED PERMITTING 11 (2007) (discussing several case studies on streamlined permitting as a means of promoting economic development in each region).

330. See GREENBERG ET AL., *supra* note 176, at 12. See also Lauren Ashley Week, *Less is Not More: The False Promise of Accessory Dwelling Units for San Francisco’s Lowest-Income Communities*, 30 J. OF AFFORDABLE HOUS. & CMTY. DEV. L., no. 2, 2021, at 297 (finding through an analysis of ADU permits in San Francisco that despite city-wide ADU reforms, less ADU permits were filed for in low-income

B. Policy Incentives, Financing, and Government Funding

More could also be done to incentivize shared housing arrangements on the behalf of homeowners, home seekers, and shared housing developers through tax incentives, funding, and financing programs. Since the government long ago decided to subsidize homeownership through insured lending products, downpayment assistance programs, and mortgage interest and property tax deductions,³³¹ one natural extension of these policies would be to enhance tax benefits for homeowners who utilize their dwelling for shared housing arrangements. One suggested tax reform would be to allow homeowners who rent out a room as shared housing to exclude or deduct that rent from their income tax liability. A similar program was adopted in 1992 in the United Kingdom which allows resident landlords³³² to earn up to £7,500 per year tax-free from renting out a furnished accommodation in their homes.³³³

The original intent of the UK Rent a Room Tax Relief Program was to increase the variety and quantity of low-cost rental housing, creating more options and making it easier for people to move around the country.³³⁴ A similar program could be adopted in the U.S., minus the requirement that the spare room be fully furnished. Additionally, the government should consider direct payment incentives to home seekers who rent rooms in shared housing (beyond or in conjunction with the Housing Choice Voucher Program) or permit shared housing residents to deduct their rental costs from their tax liability, similar to homeowners. Eliminating tax liability for older residents would also help address any challenges with qualifying for public benefits due to higher income from shared housing rent. Further research should be conducted to determine the impact beyond housing, including impact on healthcare costs and outcomes.

In some instances, shared housing may qualify as low-income or affordable housing which could deem it eligible to be taxed at a rate lower than fair market value. For example, in Minnesota, low-income

communities compared to wealthier districts, resulting in fewer affordable rental options in communities that most need affordable housing).

331. See Richard Florida, *The U.S. Spends Far More on Homeowner Subsidies Than It Does on Affordable Housing*, BLOOMBERG (April 17, 2015, 9:40 AM), https://www.bloomberg.com/news/articles/2015-04-17/the-u-s-spends-far-more-on-homeowner-subsidies-than-it-does-on-affordable-housing?utm_source=website&utm_medium=share&utm_campaign=copy [https://perma.cc/C3AL-RLRJ].

332. See *HS223 Rent a Room Scheme (2022)*, HM REVENUE & CUSTOMS (Apr. 6, 2023) (U.K.), <https://www.gov.uk/government/publications/rent-a-room-for-traders-hs223-self-assessment-helpsheet/hs223-rent-a-room-scheme-2022> [https://perma.cc/7EXS-WT2W].

333. Income Tax (Trading and Other Income) Act 2005, c.5, § 789(4) (U.K.).

334. See HM TREASURY, RENT A ROOM RELIEF: SUMMARY OF RESPONSES 2 (2018) (U.K.), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723126/rent_a_room_relief_summary_of_responses_web.pdf [https://perma.cc/E97S-VU3P].

rental housing will be taxed at twenty-five percent of the market rate beginning in 2024.³³⁵ In Pennsylvania, the legislature recently passed the Affordable Housing Unit Tax Exemption Act, which permits local taxing authorities to refund or forgive real estate tax increases for low-income families.³³⁶ Other property tax and rent rebate programs already in existence could be expanded. If a home share resident who meets the residency requirements in terms of age and is sharing with someone who meets either an income or disability definition, the homeowner/sharer would be eligible for a property tax rebate (even if they have a higher income level).

Traditional private financing options may be available for shared housing arrangements through co-ownership or joint mortgages.³³⁷ Those predominantly white households who hold disproportionate housing wealth through homeownership are most likely to have the means to cultivate a formal home share arrangement.³³⁸ Lenders should continue to move towards a more equitable approach in recognizing different household formations and ownership structures for financing. There are limited federal subsidies available to shared homeownership models.³³⁹ However, HOME and Community Development Block Grant funds have been used for shared equity homeownership models, specifically for community land trusts.³⁴⁰

In addition to thinking beyond traditional ownership structure and lending models, underwriting guidelines may need to be updated for single-family dwellings that are used for shared housing.³⁴¹ For

335. See MINN. STAT. § 273.13(e) (2023).

336. 72 PA. CONS. STAT. § 4728.203(b) (2022).

337. The most common way to finance a shared dwelling is through co-ownership which requires that each party qualify together for a joint mortgage. See MINISTRY OF MUN. AFFS. & HOUS., CO-OWNING A HOME 9 (2019), <https://files.ontario.ca/books/mmah-co-ownership-guide-en-2019-12-11.pdf> [<https://perma.cc/9DEH-JDC5>]; see Dawn Papandrea, *How to Buy a House with Multiple Owners*, MY MORTG. INSIDER (June 30, 2023), <https://mymortgageinsider.com/co-owning-house-with-friends-relatives-7238/> [<https://perma.cc/658D-CBUF>].

338. NAT'L ASS'N OF REALTORS, 2023 SNAPSHOT OF RACE AND HOME BUYING IN AMERICA 6–9 (2023), <https://cdn.nar.realtor/sites/default/files/documents/2023-snapshot-of-race-and-home-buying-in-the-us-03-02-2023.pdf> [<https://perma.cc/5RAL-TTJH>] (72.7% of white Americans own a home while only 44% of black Americans own a home.).

339. The primary ways that the federal government supports housing is through rental assistance to low-income families, grants to state and local governments, and homeowner assistance. See CONG. RSCH. SERV., OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND Policy 2 (2019), <https://crsreports.congress.gov/product/pdf/RL/RL34591>.

340. Kristin King-Ries, *Advocating for Community Land Trusts*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 365, 384 (2023) (discussing the scarcity of federal funding for community land trust and other shared equity homeownership models).

341. Fannie Mae guidelines only permit lenders to underwrite mortgage loans using a borrower's rental income if (1) the rental income is likely to continue; and if coming from the subject property (2) is from a “two- to four-unit principal residence

example, for ADU's, some credit unions in California are permitting the future rent and future value of the ADU unit to be considered as part of the underwriting process for construction loans.³⁴² Similarly, if a home sharer applies for a home equity loan or new construction loan and anticipates sharing the space, the rental income should be considered by lenders as part of the underwriting process. Credit score expectations should also be adjusted when multiple home sharers are engaged in sharing a dwelling.

Shared equity models could also be explored in a shared housing context. This would require a partnership between a homeowner or home sharer and a government entity, nonprofit, a community housing development organization (CHDO), or a community land trust.³⁴³ The entity could subsidize construction or renovation of the property in exchange for a use agreement that the dwelling be used as shared housing for a particular period of time.³⁴⁴ The loans from the entity could either be forgivable or bundled as a group and securitized to sell to investors so that additional funding could be lent for more units.³⁴⁵ Additionally, demand for landlords that are willing to accept Section 8 vouchers remains high and home sharers could receive financial assistance or funding support in exchange for renting to a Section 8 voucher holder.³⁴⁶

Ava Housing, an innovative program in Ireland, combines aging in place modifications with renovations for a second unit in the home.³⁴⁷

property in which the borrower occupies one of the units." These guidelines do not contemplate underwriting rent that comes from a single-family shared property, but only from multi-family residences. See FANNIE MAE, SELLING GUIDE: FANNIE MAE SINGLE FAMILY 322 (2023), <https://singlefamily.fanniemae.com/media/36761/display> [https://perma.cc/6GEN-WTSP].

342. GREENBERG ET AL., *supra* note 176, at 10.

343. See Shared Equity Models Offer Sustainable Homeownership, *supra* note 318.

344. See e.g., STEPHANIE FIRESTONE & ESTHER GREENHOUSE, BUILDING EQUITY THROUGH SHARED EQUITY ADUs, AARP (2022), <https://www.aarpinternational.org/file%20library/build%20equity/aarp-sharedequity-casestudy-final.pdf> [https://perma.cc/YZ5G-G5PS].

345. See generally Bendix Anderson, *Securitization Programs Bring Capital to Affordable Housing*, MULTIFAMILY EXEC. (July 23, 2019), https://www.multifamily-executive.com/business-finance/securitization-programs-bring-capital-to-affordable-housing_o#:~:text=Several%20growing%20securitization%20programs%20help,properties%20such%20as%20public%20housing [https://perma.cc/R63K-7XD2].

346. In Philadelphia, the Housing Authority try to incentivize landlord participation in the Housing Choice Voucher Program by providing cash payments and expediting the approval process. See Michaëlle Bond, *PHA is offering cash to try to entice landlords to accept tenants using federal housing vouchers*, THE PHILA. INQUIRER (March 22, 2022, 5:14 PM), <https://www.inquirer.com/real-estate/housing/rent-assistance-housing-voucher-pha-landlord-philadelphia-20220322.html> [https://perma.cc/UCR7-4QLF].

347. See STEPHANIE FIRESTONE & ESTHER GREENHOUSE, RIGHTSIZING IN PLACE, AARP 2 (2021), <https://www.aarpinternational.org/file%20library/build%20equity/aarp->

Ava Housing provides project management for the retrofit and after renovation, ongoing management agent services for the second unit.³⁴⁸ The funding for this initiative came from the government, but Ava Housing is also exploring a unique loan product with credit union lenders to assist homeowners with the retrofit and renovation.³⁴⁹

Although homeowner renovation may be available in some states, having an organization to help homeowners navigate and provide more centralized assistance for renting out the second room or unit could be beneficial. In California, the state housing finance agency initiated a \$40,000 grant program for pre-development and closing costs associated with new ADU construction.³⁵⁰ California allocated \$100 million for this ADU grant program for low-to-moderate income homeowners and the funding was quickly depleted.³⁵¹ This underscores the importance of allocating government funding and financing programs to support other shared housing arrangements.

C. Community Education, Partnership & Socialization

Shared housing is not primarily an institutional fix, but one focused on community-based solutions.³⁵² The United States has a housing supply problem that experts link to issues with construction materials, labor, lending, and land availability.³⁵³ Despite these problems, historic government promotion, subsidization of homeownership, and a focus on housing demand rather than supply has created a social preference for single-family housing as the ideal that is now finally beginning to wane.³⁵⁴ There is social stigma against those in intergenerational or two-family homes as many people assume these residents earn low incomes and cannot afford their own separate home.³⁵⁵ Despite the

principlesinaction-avahousing-casestudy-final.pdf [https://perma.cc/N6E2-U94K].

348. *Id.* at 3.

349. *Id.* at 4.

350. *ADU Grant Program*, *supra* note 171.

351. *See Single Family Lending Program Bulletin*, CAL. HOUS. FIN. AGENCY (Dec. 05, 2022), <https://www.calhfa.ca.gov/adu/> [https://perma.cc/52YL-K4EV].

352. ANITRA NELSON, SMALL IS NECESSARY: SHARED LIVING ON A SHARED PLANET 244–45 (2018).

353. JIM PARROTT & MARK ZANDI, OVERCOMING THE NATION'S DAUNTING HOUSING SUPPLY SHORTAGE, MOODY'S ANALYTICS 2 (Mar. 2021), <https://www.moodyanalytics.com/-/media/article/2021/Overcoming-the-Nations-Housing-Supply-Shortage.pdf> [https://perma.cc/JEL5-YS3H].

354. *See* Emily Badger & Quoc Trung Bui, *Cities Start to Question an American Ideal: A House with a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html> [https://perma.cc/52MX-3YAW].

355. *See* Matthew C. Marlay, *A Dream Deferred? Residential Attainment among Minority and Immigrant Groups in the United States* 54–55 (Dec. 2008) (Ph.D. dissertation, Pennsylvania State University), <https://etda.libraries.psu.edu/catalog/8872>, [https://perma.cc/36AW-W4P4]; *see also* Corrienne Payton Scally, *The Nuances*

stigma, multigenerational home design is catching on; however, new construction models are targeted to and often affordable only to those with higher incomes.³⁵⁶

The codification of state legislation that either recognizes or defines shared housing or includes it within equitable tax programs will be useful for underscoring its legitimacy with municipal authorities, realtors, lenders, assessors, and title companies.³⁵⁷ In this sense, the law can seek to change attitudes.³⁵⁸ This formal recognition or defining of shared housing on a state level could also help unlock potential funding to support community-based organizations with outreach in helping to foster understanding and facilitation of shared housing efforts among community members.³⁵⁹ Outreach could include education on what shared housing is, the benefits, model home-sharing agreements, and best practices guides.

Communities can also look to partner with various community organizations or social service providers whose populations may be good candidates for home share programs. One example in Pennsylvania is the PA SHARE Program which is administered by the Pennsylvania Department of Aging.³⁶⁰ Other opportunities exist to create intergenerational partnerships with educational institutions to house college students with older adults.³⁶¹ Finally, shared housing also re-raises some important questions, including: Who does land in the community belong to and whether local land use laws create a collective property

of NIMBY Context and Perceptions of Affordable Rental Housing Development, 49 URB. AFFS. REV. 718, 721 (2013) (renters are viewed as being less invested in their community and are often perceived to be poorer than their homeowner counterparts).

356. The Next Gen home model from Lennar is priced from \$426,490 in one Florida community. See Michele Lerner, *The increasing popularity in multigenerational homes*, WASH. POST (Nov. 12, 2020, 7:00 AM), https://www.washingtonpost.com/realestate/the-increasing-popularity-in-multigenerational-homes/2020/11/11/867d92ec-1f8e-11eb-90dd-abd0f7086a91_story.html [https://perma.cc/MT8Z-6CZE].
357. See *The role of states in shaping local housing strategies*, LOC. HOUS. SOL., <https://localhousingsolutions.org/plan/the-role-of-states-in-shaping-local-housing-strategies/> [https://perma.cc/MW9P-PF29] (last visited Sept. 23, 2023).
358. See BOUDREAUX, *supra* note 149, at 195.
359. See *e.g.*, OFF. OF CMTY. RENEWAL, NPP/RPP HOMEOWNERSHIP PRESERVATION INITIATIVE: REQUEST FOR PROPOSALS OUTREACH AND EDUCATION PROJECT FUNDING 2 (2018) (New York allocated state funding to pay for community organizations in areas with high concentrations of manufactured home communities to facilitate relationships and conduct outreach with those communities to share resources).
360. See *SHARE - Shared Housing and Resource Exchange*, *supra* note 96.
361. See *generally* GENERATIONS UNITED, <https://generations-united.com/> [https://perma.cc/WS89-T2QZ] (last visited June 2, 2023). See also Kelly McLaughlin, *College students and senior citizens living together? It's more common than you think*, INSIDER (Feb. 15, 2020, 11:26 AM), <https://www.insider.com/intergenerational-living-senior-citizens-college-students-2020-1> [https://perma.cc/JU46-6X98] (reporting UC Berkeley, Drake University, Quinnipiac University and Winona State University as higher education institutions that have intergenerational living programs).

right?³⁶² Small housing tools like shared housing arrangements can empower communities to meet their housing, financial, and well-being needs if local regulations are modernized and financing or funding options are expanded.

VIII. CONCLUSION

Rooms are sitting vacant in the middle of a housing crisis.³⁶³ The slow growth of missing middle housing stock³⁶⁴ represents an opportunity for shared housing to fill a gap. There are multiple constituencies interested in the creation of shared housing, including older persons, marginalized populations, survivors of domestic violence, those leaving a marriage, those who have recently had a child, the unhoused population or folks who recently suffered a loss of income, and students.³⁶⁵ Shared housing programs and arrangements provide housing opportunities using existing housing stock and do not require significant additional construction expenses. While shared housing is not an exclusive solution to bolstering affordable housing, it may serve to fill a gap, especially in rural communities where the population is aging and new affordable housing development faces barriers.

“National affordable housing programs have historically been aimed primarily at rental and emergency housing solutions.”³⁶⁶ Shared equity “[h]omeownership [funding] has been largely overlooked.”³⁶⁷ How can government be used as a tool to empower social exchange and improve communities’ ability to create multiple generation households and the ability to age in place? Funding for conversions, matching services, case and conflict management, design resources, as well as community education about this housing model should be pursued. The single-family house is neither a social ideal nor does it serve as an accessible form of investment for many. It is time for policymakers to recognize that. Shared housing is a missing middle solution that is hiding in plain sight. With more resources, shared housing could develop into a viable option to meet many rural communities’ needs.

362. See BOUDREAUX, *supra* note 149, at 193.

363. See ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 7 (American Housing Survey data indicates that “76 percent of occupied housing units have more than one bedroom per person . . . [and this] data shows the capacity for shared housing in the U.S. housing stock.”).

364. See U.S. DEP’T OF HOUS. & URB. DEV., OFF. OF POL’Y DEV. & RSCH., PRO-HOUSING LAND USE AND ZONING REFORMS 2 (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/policy-and-practice-publication-2023-april.pdf> [<https://perma.cc/H82Y-JNWM>] (“In 2022, there were only 16,000 units started in buildings with 2–4 units across the United States.”).

365. See ASSESSMENTS OF SHARED HOUSING, *supra* note 78, at 1.

366. King-Ries, *supra* note 340, at 384.

367. *Id.*