

# SHARED HOUSING AS A MISSING MIDDLE SOLUTION FOR RURAL COMMUNITIES

Alison Lintal<sup>1</sup>

## 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. 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.<sup>2</sup> 28% of single-family homes are occupied by one person<sup>3</sup>. Recent census data shows migration trends away from urban areas and towards rural communities with growth in rural racial diversity. 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. This article will identify and examine the legal impediments to implementing shared housing programs which include: (1) failure to meet building code and density requirements; (2) antiquated definitions of family and cohabitation under zoning laws with a resultant lack of constitutional protections for unrelated people desiring to live together, (3) restrictive occupancy codes; (4) property tax assessment implications for conversion to shared use; (5) income tax and benefits eligibility intersectional challenges; (6) lack of traditional landlord tenant

---

<sup>1</sup> Visiting Assistant Professor of Law and Director of the Externship Program, Penn State Dickinson Law. With gratitude to Rachel James for her editing and research work and to Emily Ameel, Daniel Levensgood, and Millie Krnjaja for their research assistance.

<sup>2</sup> See generally MISSING MIDDLE HOUS., [missingmiddlehousing.com](https://missingmiddlehousing.com) (last visited June 2, 2023).

<sup>3</sup> U.S. Census Bureau, 2020 Current Population Survey (Figure HH-4) <https://www.census.gov/content/dam/Census/library/visualizations/time-series/demo/families-and-households/hh-4.pdf>. Analysis from Freddie Mac suggests that by 2030 there will be 5 million more sole-person households. See the Economic & Housing Research Group, *The Growth of Sole-person Households: Creating Even More Demand for Smaller, More Affordable Homes*, FREDDIE MAC (Aug. 2021) <https://bit.ly/3l46FN6>.

protections for informal shared housing arrangements; and (7) fair housing implications for shared housing. The challenge of funding and financing shared housing under current conventional and government financing structures is mentioned in Part V. Despite these legal impediments and financing challenges, shared housing presents a worthwhile endeavor as the benefits of shared housing include fostering social and intergenerational exchange and the potential for enhanced health outcomes such as aging in place and decreased social isolation. Lastly, this article will propose some regulatory and policy reforms to help alleviate barriers to the implementation of shared housing.

- I. Introduction**
- II. The Rural Affordable Housing Crisis**
  - A. Growth of The Aging Population**
  - B. Growing Diversity of Rural Communities**
  - C. Available Stock and Demand**
  - D. Challenges to Development**
- III. What is Shared Housing?**
  - A. Types of Shared Housing**
  - B. Utilization of Shared Housing**
- IV. Legal Impediments to Implementing Shared Housing**
  - A. Failure to Meet Building Code Requirements and Density Regulations**
  - B. Antiquated Definitions of Family and Cohabitation under Zoning Laws**
  - C. Restrictive Occupancy Codes**
  - D. Impact on Taxes and Benefits Eligibility**
  - E. Landlord-Tenant Protections**
  - F. Fair Housing Implications**
- V. Lack of Financing & Funding Options**
- VI. Benefits of Shared Housing**
- VII. Regulatory Reform and Policy Changes**
  - A. Land Use Regulation Modernization**
  - B. Policy Incentives, Financing, and Government Funding**
  - C. Community Education, Partnership & Socialization**
- VIII. Conclusion**

## 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<sup>4</sup>, it also celebrated individual autonomy, privacy, choice and freedom of association. The celebration and adulation of a vision of homeownership for all is a fairly modern construction that was aided through public policies such as zoning regulations and the subsidizing of single-family home development through federal housing finance programs. Significant portions of the population have faced barriers to homeownership as a result of systemic racism.<sup>5</sup>

This article intends to highlight how our societal attachment to the myth of the single-family home, has closed policy-makers eyes to shared housing arrangements which serve a larger population that does not conform to a traditional nuclear family household<sup>6</sup>. This attachment has created institutional and cultural barriers to home-sharing in the United States. In light of the lack of available affordable rental units, promoting shared housing as one affordable housing option, particularly in rural communities where stock and development options are limited, is one way to house folks without a significant expenditure of resources. Under arcane zoning and land use regulations, home sharing among unrelated household members is often a prohibited use.

Home-sharing reimagines unused space. This article aims to examine whether it could be a solution to meet the housing needs of an aging and diversifying rural population and provide an affordable rental option to many. Current single-family housing stock is being underutilized. Changes to state and local laws and state and federal policies could assist with promoting home sharing as one option for meeting modern demands in the housing market. Shared housing could serve as a useful solution for

---

<sup>4</sup> Jenny Schuetz, *Rethinking homeownership incentives to improve household financial security and shrink the racial wealth gap*, BROOKINGS INSTITUTION (Dec. 9, 2020), <https://www.brookings.edu/research/rethinking-homeownership-incentives-to-improve-household-financial-security-and-shrink-the-racial-wealth-gap/> (“For households in the three middle-income quintiles, home equity is the largest single financial asset, representing between 50% and 70% of net wealth.”)

<sup>5</sup> See *Rethinking homeownership*, *supra* note 4.

<sup>6</sup> GEORGE HEMMENS ET AL., 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 manifestation of rugged individualism and self-reliance denies our countries’ traditions and history of independent connections between extended families, neighbors and communities.”) *Id.*

creating “multiple household” housing in single-family housing rich rural communities.

## II. The Rural Affordable Housing Crisis

The shortage of affordable housing stock in the U.S. has been well-documented.<sup>7</sup> In rural communities in particular, affordable housing stock is declining.<sup>8</sup> “Throughout [Pennsylvania], increases in both single person households and households with older members are exacerbating the housing shortage.”<sup>9</sup> The term rural can have varied definitions depending upon the context. For instance, the Farm Bill defines rural by what it is not – “any area other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town.”<sup>10</sup> The Center for Rural Pennsylvania defines rural communities based upon population density of less than 291 people per square mile.<sup>11</sup> According to 2020 Census data, 14 percent of the U.S. population or 46 million people live in rural communities.<sup>12</sup> Housing opportunity and cost is often cited as a reason why people choose to migrate to rural communities.<sup>13</sup>

---

<sup>7</sup> See *The Gap: A Shortage of Affordable Homes*, THE NATIONAL LOW INCOME HOUSING COALITION (March 2023), file:///C:/Users/af12/Downloads/Gap-Report\_2023.pdf; See also Peggy Bailey, *Priced Out: The State of Housing in America*, CENTER ON BUDGET AND POLICY PRIORITIES (July 21, 2022), <https://www.cbpp.org/sites/default/files/7-21-22housing-testimony.pdf>; Diana Ionescu, *The Quiet Housing Crisis in Rural America*, PLANETIZEN (March 20, 2023), <https://www.planetizen.com/news/2023/03/122189-quiet-housing-crisis-rural-america>

<sup>8</sup> 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, THE CENTER FOR RURAL PENNSYLVANIA, at 4 (2006). [https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/191/Affordable\\_Housing06.pdf](https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/191/Affordable_Housing06.pdf)

<sup>9</sup> THE CENTER FOR RURAL PENNSYLVANIA, *supra* note 8.

<sup>10</sup> Farm Security and Rural Investment Act of 2002, P.L. 107-171, § 6020.

<sup>11</sup> According to the Center’s definition, 48 of Pennsylvania’s 61 counties are considered rural or 26% of the state’s population. See the Ctr. for Rural PA., *Rural Urban Definitions*, THE CENTER FOR RURAL PENNSYLVANIA, <https://www.rural.pa.gov/data/rural-urban-definitions> (last visited Mar. 10, 2023).

<sup>12</sup> Kenneth Johnson & Daniel Lichter, *Growing Racial Diversity in Rural America: Results from the 2020 Census*, UNIVERSITY OF NEW HAMPSHIRE (2022) <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1450&context=carsey>

<sup>13</sup> Sherri Clark, *Migration for Housing: Urban Families in Rural Living*, THE CENTER FOR RURAL PENNSYLVANIA 4 (2008) [https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/175/migration\\_for\\_housing.pdf](https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/175/migration_for_housing.pdf).

### 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 80 and over.<sup>14</sup> According to the 2012-2016 American Community Survey data, more than 1 in 5 older Americans lives in rural areas and this trend will continue as the older rural population ages.<sup>15</sup> 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 65+ community live in skilled nursing facilities than those in rural communities.<sup>16</sup> Single households aged 80 and over have an average median income of \$22,000 and although they often own their homes, they are cost-burden (meaning they pay more than 30% of their income on housing).<sup>17</sup> Affordability, accessibility and supportive care needs prevent significant obstacles to many older adults ability to age in place. Yet, many older adults express a desire to age-in-place.

A 2019 study found that many middle-income seniors do not qualify for public benefits programs but cannot afford to pay the costs associated with residing in an assisted living facility.<sup>18</sup> The Elder Economic Security Standard Index estimates how much income older households need in order to sustain their housing, transportation, food and health costs.<sup>19</sup> For an older household in rural Monroe County, Pennsylvania, a renter needs \$27,420 per year for economic security and an older household with a mortgage needs \$37,800 per year to sustain their estimated household costs.<sup>20</sup> Nationwide data reveals that most older adult homeowners (80%) reside in single-family structures and that a growing portion of older adults reside in

---

<sup>14</sup> Jennifer Molinsky, *The Number of People Living Alone In Their 80s And 90s Is Set To Soar*, HARVARD JOINT CENTER FOR HOUSING STUDIES (2020)

<https://www.jchs.harvard.edu/blog/the-number-of-people-living-alone-in-their-80s-and-90s-is-set-to-soar>.

<sup>15</sup> Amy Symens Smith and 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>

<sup>16</sup> *Id.* (3.1% of urban residents reside in skilled nursing facilities versus 1.4% of rural residents.)

<sup>17</sup> *Id.*

<sup>18</sup> See generally Caroline Pearson et al., *The Forgotten Middle: Many Middle-Income Seniors Will Have Insufficient Resources for Housing and Healthcare*, 38 HEALTH AFFAIRS 5 (2019).

<sup>19</sup> Elder Index, *Boston, MA: Gerontology Institute*, UNI. OF MASS. BOSTON (2021) ElderIndex.org.

<sup>20</sup> *Id.* at Monroe County, PA.

low-density or non-metro communities.<sup>21</sup> In addition to a concentration of seniors in rural communities, the housing stock in rural areas is also aging.<sup>22</sup>

### **B. Growing Diversity of Rural Communities**

Although recent census data reveals that rural populations have declined by 0.6% between 2010-2020, rural America experienced increased racial diversity.<sup>23</sup> 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.<sup>24</sup> The shifting demographics of the rural population is particularly pronounced in the younger generations with nearly one in three rural children coming from racial or ethnic minority populations.<sup>25</sup> The way marginalized racial and ethnic populations choose or prefer to live may also be different than the typical white nuclear single-family household. A 2021 study found that 1 in 4 Americans live in multigenerational households.<sup>26</sup> Latinx Americans and Black Americans are much more likely than white Americans to live in a multigenerational household.<sup>27</sup> 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.<sup>28</sup>

### **C. Available Stock and Demand**

Throughout the last decade, rural home purchases have outpaced the purchase of homes in urban and suburban areas.<sup>29</sup> According to state-wide data from Pennsylvania, rural home purchases continued to exceed urban

---

<sup>21</sup> *Housing America's Older Adults 2019*, JOINT CENTER FOR HOUSING. STUDIES OF HARVARD UNIVERSITY, 3-4 (2019).

<sup>22</sup> “In 2013, 63 percent of rural homes were at least 30 years old. Rolf Pendall, Laurie Goodman, Jun Zhu, and Amanda Gold, *People and homes are aging quickly in our rural communities*, Urban Institute (October 20, 2016), <https://www.urban.org/urban-wire/people-and-homes-are-aging-quickly-our-rural-communities>.

<sup>23</sup> Johnson & Lichter, *supra* note 12, at 1.  
(<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1450&context=carsey>)

<sup>24</sup> Johnson & Lichter, *supra* note 12, at 1-2.

<sup>25</sup> Johnson & Lichter, *supra* note 12, at 2.

<sup>26</sup> *Fact Sheet: Multigenerational Households 1*, GENERATIONS UNITED (2021), <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-FactSheet.pdf>.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *See generally Rural Home Purchases Outpaced Urban Purchases Through the 2010s*, FREDDIE MAC (2021), [https://www.freddiemac.com/fmac-resources/research/pdf/202105-note-rural\\_home\\_purchases.pdf](https://www.freddiemac.com/fmac-resources/research/pdf/202105-note-rural_home_purchases.pdf).

home purchases during the COVID-19 pandemic.<sup>30</sup> Mortgage loan amounts tend to be lower in rural communities and borrowers are mostly over 55 years old.<sup>31</sup> The rural real estate market may be desirable from a cost and opportunity perspective, but research has shown that at least in Pennsylvania overall housing quality is lower in rural areas than it is in urban areas.<sup>32</sup>

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.<sup>33</sup> Within the USDA's Section 515 portfolio are over 13,000 rental properties providing more than 415,000 affordable units.<sup>34</sup> The USDA Section 515 properties are located in every state and the majority of tenants are seniors and persons with disabilities who receive rental assistance.<sup>35</sup> Affordability restrictions remain in place on Section 515 properties until the loan matures or is prepaid by the owner.<sup>36</sup> Rental assistance for many of these projects end when the federal loan matures or is prepaid which will impair tenants ability to prepay rent.<sup>37</sup> Many of these Section 515 loans are expected to mature at a heightened pace beginning in 2028<sup>38</sup> with little to no replacement development planned.

#### D. Challenges to Development in Rural Communities

The prevalence of single-family zoning across all types of jurisdictions has resulted in only 25% of residential land being eligible for

---

<sup>30</sup> See generally *Welcome to Rural Pennsylvania: COVID-19 and Residential Property Sales*, CENTER FOR RURAL PENNSYLVANIA (2021), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/3/COVID-19-and-Residential-Property-Sales-102721.pdf>.

<sup>31</sup> Freddie Mac, *supra* note 29 ([https://www.freddiemac.com/fmac-resources/research/pdf/202105-note-rural\\_home\\_purchases.pdf](https://www.freddiemac.com/fmac-resources/research/pdf/202105-note-rural_home_purchases.pdf)).

<sup>32</sup> Ying Yang et al., *Assessment and Analysis of Housing Quality and Policies in Rural Pennsylvania* 19, CENTER FOR RURAL PENNSYLVANIA (2022), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/251/Assessment%20of%20Housing%20Stock%20Quality%202022-revised.pdf>.

<sup>33</sup> *Rental Housing for a 21<sup>st</sup> Century Rural America*, HOUSING ASSISTANCE COUNCIL (2018), <https://ruralhome.org/rural-america-is-losing-its-affordable-rental-housing/#rental-housing-for-a-21st-century-rural-america-a-platform-for-preservation/2/>.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> 7 C.F.R. §3560.72(2); 7 C.F.R. §3560.651-3460.663.

<sup>37</sup> See 7 C.F.R. §3560.660(b).

<sup>38</sup> *USDA Rural Development Maturing Mortgages*, APARTMENTSMART.COM, <https://affordablehousingonline.com/rd-maturing-mortgages> (last visited Mar. 11, 2023).

multifamily housing development in many American cities.<sup>39</sup> 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. 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<sup>40</sup>, LIHTC-funding generally favors higher density developments. For instance, in Pennsylvania, proposed projects must contain at least 24+ units in order to be eligible for tax credit financing.<sup>41</sup> State-administered federal HOME Investment Partnership Program funds can often be used to provide gap financing for new construction or rehabilitation deals. However, in some jurisdictions, like Pennsylvania, high priority for HOME funds is given to developments with less than 10 units.<sup>42</sup> For developers aiming to develop a market-responsive 10-23 units of affordable housing in rural communities, financing and funding opportunities are very limited.

Another tool, the Community Reinvestment Act of 1977 (“CRA”) mandates that federally insured banking and savings associations invest in low and moderate-income communities.<sup>43</sup> Critics have argued that the CRA motivates investors to invest in urban/metropolitan areas as opposed to rural areas.<sup>44</sup> While only 8 percent of lenders reported a majority rural and small-town assessment area population, policy researchers have found that the CRA does provide some assistance to rural lenders and development, but additional modifications could be made.<sup>45</sup>

---

<sup>39</sup> 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>

<sup>40</sup> 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://www.phfa.org/forms/multifamily_news/news/2022/2022-lihtc-allocation-plan.pdf).

<sup>41</sup> PA. HOUS. FIN. AGENCY, *Tax Program Guidelines 2* (2022), [https://www.phfa.org/forms/multifamily\\_application\\_guidelines/guidelines/2022/2022-mpg-04.pdf](https://www.phfa.org/forms/multifamily_application_guidelines/guidelines/2022/2022-mpg-04.pdf).

<sup>42</sup> PA. DEP’T OF CMTY. & ECON. DEV., *HOME Program Guidelines 2* (2022) <https://dced.pa.gov/download/home-program-guidelines/?wpdmdl=80332>

<sup>43</sup> Community Reinvestment Act, 12 U.S.C. § 2901 (1977).

<sup>44</sup> *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/> (last visited Mar. 11, 2023).

<sup>45</sup> *See the Community Reinvestment Act and Mortgage Lending in Rural Communities*, HOUS. ASSISTANCE COUNCIL (2015) <https://ruralhome.org/wp-content/uploads/storage/documents/publications/rrreports/rrr-cra-in-rural-america.pdf>



Lower density options such as those created by innovative shared housing and intergenerational models often have challenges obtaining interest from tax-credit investors and funding from state funders. In rural areas there are also 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 easements<sup>46</sup> garner top priority. But traditional land zoning and market-based preservation tools tend to favor primarily white property owners and exclude other community voices from land use conversations in rural areas.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

This decline in number of acres developed per person may be an intentional reaction on the part of developers and planners to combat sprawl which tends to have greater impacts on metropolitan areas than rural communities.<sup>50</sup> Especially in urban areas, some have turned to infill development<sup>51</sup> as a means of increasing density and reimagining vacant land near already existing infrastructure. 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 75 percent of the perimeter of the site adjoins parcels that are

---

<sup>46</sup> The National Conservation Easement Database indicates there are 201,525 conservation easements that preserve 33.5 million acres. See *National Conservation Easement Database*, NCED, <https://www.conservationeasement.us/> (last visited Mar. 11, 2023).

<sup>47</sup> See Liz Rinehart, *Zoned for Injustice: Moving Beyond Zoning and Market-Based Land Preservation to Address Rural Poverty*, 23 GEO. J. ON POVERTY L. & POL'Y 1, 63 (2015).

<sup>48</sup> U.S. Dep't of Agric., *Summary Report: 2017 Natural Resources Inventory*, NAT. RES. CONSERVATION SERV., WASHINGTON, DC, AND CTR. FOR SURVEY STATISTICS AND METHODOLOGY, IOWA STATE UNI., AMES, IA Table 8, 3-46 (2020) [https://www.nrcs.usda.gov/sites/default/files/2022-10/2017NRISummary\\_Final.pdf](https://www.nrcs.usda.gov/sites/default/files/2022-10/2017NRISummary_Final.pdf)

<sup>49</sup> *Id.* at 2-7.

<sup>50</sup> See generally Dean Pacilli, *Compact Growth and Smart City Development: the Unsustainability of Urban Sprawl* (Dec. 2019) <https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/62339/Pacilli,%20Dean.pdf?sequence=1>; Bigelow D.P. et al., *A major shift in U.S. land development avoids significant losses in forest and agricultural land*, 17 ENVIRON. RES. LETT. 1 (2022) (finding that rising gas prices have been a primary factor in denser development trends).

<sup>51</sup> *What Is Infill Development?*, PLANETIZEN, INC., <https://www.planetizen.com/definition/infill-development> (last visited Mar. 12, 2023).

developed with urban uses.”<sup>52</sup> Accessory Dwelling Units which are converted or constructed within the existing property footprint also serve as infill. In a rural context, shared housing and home sharing models can serve as infill in communities where development is nonexistent and there is vacancy or low-cost opportunities in single-family housing stock.

### 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.<sup>53</sup> 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].”<sup>54</sup> Shared housing may include forms of intergenerational living arrangements. Shared housing can be created through by informal (illegal) and formal (legal) modifications that allow for better use of household space and refinement of household composition. It is often described as a “community-focused solution” that is facilitated through state-sponsored match programs, non-profits or private entities.<sup>55</sup> Households create and utilize additional dwelling space in many informal ways that may not be permitted by current laws such as (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<sup>56</sup>) rules.<sup>57</sup>

#### A. Types of Shared Housing

---

<sup>52</sup> Cali. Health & Safety Code, HSC § 53545.12 (2019).

<sup>53</sup> See U.S. DEP’T OF HOUS. AND URBAN DEV. PD&R INSIGHTS, ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES 1 (June 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/Insights-of-Housing.pdf>; UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6 at 59.

<sup>54</sup> Shared Housing Definition, 24 C.F.R. 982.4.

<sup>55</sup> See *Strategies for Scaling Shared Housing: Best Practices, Challenges & Recommendations*, AFFORDABLE LIVING FOR THE AGING 5 (2012)

<https://alasseniorliving.org/wp-content/uploads/2022/04/ALA-Strategic-Guide.pdf>.

<sup>56</sup> S.F. ADMIN CODE §41A.

<sup>57</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 34.

Home-sharing, co-housing<sup>58</sup>, and cooperative housing are all different shared housing models. Types of shared housing include single-room occupancy (“SRO”) housing<sup>59</sup>, shared living residences (SLRs)<sup>60</sup>, 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. Today, we might think of planned use developments or condominiums with shared spaces as a modern version of one type of shared housing. Additionally, we have seen a resurgence in the promotion of legalized accessory dwelling units. This article will focus specifically on home-sharing arrangements, in particular between unrelated households. 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.<sup>61</sup>

When we think of a shared living arrangement, we often think of having a roommate. Beyond institutional arrangements which are not voluntary, what characterizes shared housing is “an intentional and purposeful commitment” to share either physical space, social life and household tasks, and/or finances.<sup>62</sup> Typical sharing arrangements involve more than one household which may vary in its level of independence. Best practices for home sharing encourage the creation of shared living contracts

---

<sup>58</sup> (Describing co-housing has a “type of shared housing development that began as a grass roots movement in Denmark and Holland in the 1970s.”) UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 55. These co-housing arrangements are typically individual units that also have access to communal facilities. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 55. Planned unit developments are a modern riff on this model. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 55.

<sup>59</sup> SROs are living units for one individual with a shared bath. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 77. They were initially built by private developers to house poor transient workers in urban areas between 1870 and 1920. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 77. Over time, SROs became a permanent housing option 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. UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 77.

<sup>60</sup> SLRs could include group homes, cooperative living, communal living or residence homes and often integrate case management and other supportive services. *See Strategies for Scaling Shared Housing*, *supra* note 55, at 8.

<sup>61</sup> *About National Shared Housing Resource Center*, NAT. SHARED HOUS. RES. CTR, <https://nationalsharedhousing.org/about/> (last visited Mar. 12, 2023).

<sup>62</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 7.

or agreements. “Sharing, like any other human relationship, depends upon trust and predictability.”<sup>63</sup> Outlining which spaces are common, which spaces are private, how household tasks will be divided are important for the longevity of the arrangement. Home sharing is often facilitated through an intermediary organization, which may be a for-profit entity like Nesterly<sup>64</sup>, a nonprofit entity like HomeShare Vermont<sup>65</sup>, or a state-sponsored program such as The Shared Housing and Resource Exchange (SHARE) Program through the Pennsylvania Department of Aging<sup>66</sup>.

## B. Utilization of Shared Housing

The way that modern Americans are choosing to live has shifted. The stigma of shared housing preserves in our collective awareness that belief that shared housing is only for poor and low-income families, single adults, teenaged parents with children and service dependent folks.<sup>67</sup> In fact, shared housing is also sought out by middle-class households comprised of people who work from their residential space, older adults seeking companionship and social community and support, and people who define their household relationships by “reciprocity rather than kinship” for various reasons.<sup>68</sup> People may choose to share housing for a variety of reasons including financial, social and cultural.

In the aftermath of the COVID-19 pandemic, many families have reconsidered how they live and work.<sup>69</sup> The proliferation of the hybrid

---

<sup>63</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 115.

<sup>64</sup> NESTERLY, <https://www.nesterly.com/about-us/> (last visited Mar. 15, 2023).

<sup>65</sup> HOMESHARE VERMONT, <https://www.homesharevermont.org/> (last visited Mar. 15, 2023).

<sup>66</sup> PA. DEP’T. OF AGING, *SHARE - Shared Housing and Resource Exchange*, <https://www.aging.pa.gov/aging-services/housing/Pages/SHARE.aspx> (last visited Mar. 15, 2023).

<sup>67</sup> *See* UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 125.

<sup>68</sup> *See* UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6, at 125.

<sup>69</sup> Andrew Collins, *The pandemic hasn’t killed house sharing – its reinvented it*, FORTUNE (Nov. 17, 2021), <https://fortune.com/2021/11/17/covid-house-sharing-roommates-real-estate-andrew-collins-bungalow/> (“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”); *COVID-19 Pandemic Continues to Reshape Work in America*, PEW RESEARCH CENTER, (Feb. 16, 2022), <https://www.pewresearch.org/social-trends/2022/02/16/covid-19-pandemic-continues-to-reshape-work-in-america/>; Heather Kelly & Rachel Lerman, *The pandemic is making people reconsider city living, trading traffic for chickens*, WASH. POST (June 1, 2020), <https://www.washingtonpost.com/technology/2020/06/01/city-relocate-pandemic/>.

workspace has fostered renewed interest in hybrid housing which combines business and residential space. For many low-income homeowners and homeowners of color, the house is their main financial asset, and many older households are cost burdened.<sup>70</sup> For those who own their home, sharing domestic space is one way to generate income resulting in an opportunity to improve economic security as well as age in place.

36.1 million households or 28% of all households in the United States are sole-person households – a statistic that has doubled within the last 40 years.<sup>71</sup> Baby boomers comprise 39% of sole person households and 68% of sole-person households identify as white.<sup>72</sup> Researchers at Freddie Mac estimate that an additional 5 million sole-person households will be added within the next decade resulting in a growing demand for smaller, more affordable homes.<sup>73</sup> In juxtaposition to the rise of sole-person households is a documented increase in multigenerational living arrangements.<sup>74</sup> 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.<sup>75</sup>

On the whole, only 1.8 percent of the population lived with non-relatives in a roommate or home-sharing arrangement in 2017.<sup>76</sup> Current HUD estimates place shared housing rates between 3-20 percent of all

---

<sup>70</sup> Nearly 10 million households age 65 and over spend more than 30 percent of their income on housing. *See Housing America's Older Adults 2019, supra* note 21, at 8.

<sup>71</sup> *See* Economic & Housing Research Group, *supra* note 3.

<sup>72</sup> *See* Economic & Housing Research Group, *supra* note 3.

<sup>73</sup> *See* Economic & Housing Research Group, *supra* note 3.

<sup>74</sup> A 2021 public survey of 2,000 adults found that one in four Americans ages 18+ are currently living in multigenerational households. *See* GENERATIONS UNITED, *Family Matters: Multigenerational Living is on the Rise and Here to Stay*, 8 (2021) <https://www.gu.org/app/uploads/2021/04/21-MG-Family-Report-WEB.pdf>. This is a 271% increase over a 10-year period based upon a similar survey. *Id.* 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 2019, supra* note 21 at 3.

<sup>75</sup> 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 2019, supra* note 21 at 3. Black households had lower adopts of multigenerational housing with 27% of black adults aged 65-79 and 36% living multigenerationally. *See Housing America's Older Adults 2019, supra* note 21 at 3. The 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 26 at 6.

<sup>76</sup> *See Housing America's Older Adults 2019, supra* note 21, at 3.

housing units.<sup>77</sup> Although the shared housing population remains relatively small, between 2006 to 2016 the number of older adults in shared housing arrangements grew by 88 percent.<sup>78</sup> Those who choose to enter a formal program seeking to share a home are typically older adults or low-income adults.<sup>79</sup>

#### IV. 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 affect shared housing opportunities in the United States. States get their 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.<sup>80</sup> Currently, if zoning laws prohibit unrelated people from living together there is little legal redress as the Supreme Court has declined to recognize a constitutional right for unrelated people to live together.<sup>81</sup> 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.<sup>82</sup> Some scholars have argued that the court's jurisprudence on police power and land use restrictions which limit who can reside together is inconsistent with decisions related to privacy and the First Amendment right of freedom of intimate association to choose who you reside with.<sup>83</sup>

Zoning and land use has historically been a function of local government. This hyper locality of decision-making coupled with the

---

<sup>77</sup> See ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at 8.

<sup>78</sup> Jennifer Molinsky, *Are More Older Adults Sharing Housing?*, THE HARVARD JOINT CENTER FOR HOUSING STUDIES (Aug. 20, 2023), <https://jchs.harvard.edu/blog/are-more-older-adults-sharing-housing>.

<sup>79</sup> Kate Magid et al., *Sharing Space to Age in Community: A Mixed Methods Study of Homeshare Organizations*, 34 J. OF AGING & SOC. POLICY 5, 819 (2022).

<sup>80</sup> See *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 379 (1926). See also 53 PA. STAT. ANN. §§ 10604 (2022) (zoning ordinances shall be designed “to promote, protect and facilitate . . . the public health, safety, morals, and the general welfare” and “to 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 . . .”)

<sup>81</sup> *Village of Belle Terre v. Boraas*, 416 U.S. 1, 7-9 (1974); See also Rigel Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 FLA. L. REV. 1401, 1414 (2016).

<sup>82</sup> *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977).

<sup>83</sup> See generally *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, *supra* note 81.

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 or resources at the municipal level such as rural areas. Land use restrictions enforced at the local level, in effect allow communities to curate not just where their neighbors live, but "how one's neighbor lives."<sup>84</sup> Underlying this overregulation is a fear that different modes of living within a single-family area will reduce property values although there is no evidence of this.<sup>85</sup>

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

Building codes serve to protect the health and safety of the household residents and the greater community. Cities began to formally regulate the construction and design of buildings in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries when fire and natural disaster destroyed swaths of housing.<sup>86</sup> 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. Often building codes are promulgated at the state-level, but decisions are left to local municipalities on whether to adopt that code or implement something different. In 1994 spurred by a federal government mandate, three of the main building codes in the U.S. initiated consolidation into one model International Building Code ("IBC") by the International Code Council which was first issued in 2000.<sup>87</sup>

Some version of the IBC has been adopted or is in use in all 50 states as well as the District of Columbia.<sup>88</sup> In contrast, the International Property Maintenance Code ("IPMC") has only been adopted by 40 states and the District of Columbia.<sup>89</sup> The IPMC covers issues like handrails, rubbish and garbage, vector and vermin extermination, and minimum light

---

<sup>84</sup> Paul Boudreaux, *THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA* 41 (Palgrave Macmillan, 2011th ed. 2011).

<sup>85</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6 at 128.

<sup>86</sup> Rossberg & Roberto Leon, *EVOLUTION OF CODES IN THE USA* 2 (2013), [https://www.nehrp.gov/pdf/UJNR\\_2013\\_Rossberg\\_Manuscript.pdf](https://www.nehrp.gov/pdf/UJNR_2013_Rossberg_Manuscript.pdf).

<sup>87</sup> *EVOLUTION OF CODES IN THE USA*, *supra* note 86 at 5-7.

<sup>88</sup> See generally INTERNATIONAL CODE COUNCIL, *Code Adoption Map*, [https://www.iccsafe.org/wp-content/uploads/Code\\_Adoption\\_Maps.pdf](https://www.iccsafe.org/wp-content/uploads/Code_Adoption_Maps.pdf) (last visited March 10, 2023); see also INTERNATIONAL CODE COUNCIL, *International Codes-Adoption by State* (August 2021), <https://www.iccsafe.org/wp-content/uploads/Master-I-Code-Adoption-Chart-AUG-2021.pdf>.

<sup>89</sup> See generally *Code Adoption Map*, *supra* note 88.

and ventilation requirements as well as plumbing, mechanical facilities, fixtures, fire safety and occupancy standards, The vast majority of rural municipalities in Pennsylvania have not adopted property maintenance codes.<sup>90</sup> This means that there may be little to no local regulation surrounding nuisance, dangerous buildings or landscape maintenance which would make it difficult to bring any enforcement actions when violations occur.

Although the IPMC is less widely adopted, certainly so in rural areas, it does seek to regulate internal household spaces through minimal square footage requirements. As an example, the IPMC requires specific sizes for living, dining and bedroom areas depending upon the number of occupants.<sup>91</sup> The chart below provides more detail.<sup>92</sup>

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) 2021 IPMC § 404.4.1 (2022)		

Constrictions on internal spatial use could affect homeowners or renters use of a 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 cultures norms about the way we should live.<sup>93</sup> Occupancy standards will be further discussed in Section IV.C.

In the case of a property conversion to shared use or the addition of an accessory dwelling unit, the building code may be triggered.<sup>94</sup> Some

<sup>90</sup> 89% or 1,417 rural municipalities out of 1,592 total rural municipalities have not adopted a specific property maintenance code. See Ying Yang et al, *Assessment and Analysis of Housing Quality and Policies in Rural Pennsylvania* 4 (Sep. 2022), <https://www.rural.pa.gov/download.cfm?file=Resources/reports/assets/251/Assessment%20of%20Housing%20Stock%20Quality%202022-revised.pdf>.

<sup>91</sup> See 2021 IPMC § 404.4.1 (2022).

<sup>92</sup> 2021 IPMC § 404.5 (2022).

<sup>93</sup> See Ellen Pader, *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, 19 J. OF ARCHITECTURAL AND PLAN. RSCH. 4, 301-302 (2002).

<sup>94</sup> See, e.g., Mike Turns et al., *A Quick Guide to the Residential Provisions of Pennsylvania's Uniform Construction Code and Local Amendments*, THE PA HOUS. RSCH.



local jurisdictions permit homeowners to convert a portion of their property into an additional dwelling space known as an accessory dwelling unit (“ADU”). Accessory dwelling units, sometimes called “granny flats,” are not the primary residence and they may or may not be connected to the main dwelling. Usually, ADUs require separate bathroom and kitchen facilities and there are varied regulations on size and who is eligible to reside in the ADU. Some municipalities may restrict homeowners’ ability to create an ADU due to density limits<sup>95</sup> or place restrictions on who is eligible to reside there.<sup>96</sup>

In response to challenges with urban sprawl, California has been at the forefront of the ADU movement, passing statewide bills in 2017 and 2020 that not just permit, but require local governments to adopt ADU ordinances and expanding ADU permittance to two ADUs per single-family property.<sup>97</sup> Researchers have found that despite these state-wide efforts to reduce barriers to ADU construction, those homeowners who build ADUs tend to be disproportionately white with higher incomes and greater access to information and professional services.<sup>98</sup> In recognition of the financial

---

CTR. (July 2013),

<https://www.phrc.psu.edu/assets/docs/Publications/AQuickGuidetotheResidentialProvisionsofUCC.pdf>.

<sup>95</sup> 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 COUNTY, PA, MUN. CODE §1006. 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 TOWNSHIP, PA, MUN. CODE §513.3. In Oil Creek Township, Crawford County, Pennsylvania, an ADU must be located at least 20 feet from the permanent dwelling unit. *See* OIL CREEK TOWNSHIP, PA, MUN. CODE §302.

<sup>96</sup> In Buffalo Township, Union County, Pennsylvania, either the primary dwelling or the ADU is required to be owner-occupied. *See* BUFFALO TOWNSHIP, PA, MUN. CODE §202. 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 TOWNSHIP, PA, MUN. CODE §302; SOUTH SHENANGO TOWNSHIP, PA MUN. CODE §202.

<sup>97</sup> *See* Land Use: Zoning, SB1069 (Sep. 27, 2016),

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB1069](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1069);

Land Use: Housing: 2<sup>nd</sup> Units, Assemb. Bill 2299 (Sep. 27, 2016),

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2299](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2299);

and Accessory Dwelling Units, SB 13 (Oct. 10, 2019),

[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB13](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB13).

<sup>98</sup> *See generally* Julia Greenberg et al, *ADUs for All: Breaking Down Barriers to Racial and Economic Equity in Accessory Dwelling Unit Construction*, TERNER CENTER AND CENTER FOR COMMUNITY INNOVATION REPORT (Aug. 2022),

<https://turnercenter.berkeley.edu/wp-content/uploads/2022/08/ADU-Equity-August-2022-Final.pdf>.

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.<sup>99</sup> 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 manufactured cottage on a participating homeowner's property on a temporary basis.<sup>100</sup> The ECHO Program is small and not available in all counties with some county participation limited due to restrictions in funding resources<sup>101</sup> 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. 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 can impact shared housing. Property owners often must seek an occupancy or use variance from local zoning boards when they are changing the use of their property or adding an additional unit. Zoning boards are staffed by local residents and the review and approval process is highly influenced by neighboring residents and community members. Zoning has been utilized by government as a way to discriminate on the basis of family form.<sup>102</sup>

---

<sup>99</sup> CAL. HOUS. FIN.AGENCY, *ADU Grant Program*, <https://www.calhfa.ca.gov/adu/> (last visited May 29, 2023).

<sup>100</sup> 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/>; PA DEP'T AGING, *Housing*, <https://www.aging.pa.gov/aging-services/housing/Pages/default.aspx> (last visited May 23, 2023).

<sup>101</sup> The ECHO Program did secure a \$400 million Pennsylvania Housing Affordability and Rehabilitation Enhancement Fund (PHARE) which is funding the expansion to some additional counties. See PA DEP'T OF AGING, *State Plan on Aging 15* (Sep. 10, 2020), [https://www.aging.pa.gov/publications/state-plan-on-aging/Documents/2020-2024\\_State\\_Plan\\_on\\_Aging.pdf](https://www.aging.pa.gov/publications/state-plan-on-aging/Documents/2020-2024_State_Plan_on_Aging.pdf).

<sup>102</sup> See generally Kate Redburn, *Zoned Out: How Zoning Law Undermines Family Law's Functional Turn*, 128 YALE L.J. 8 (2019); Tim Iglesias, *Clarifying the Federal Fair Housing Act's exemption for Reasonably Occupancy Restrictions*, 31 FORDHAM URB. L.J. 5 (2003).

Zoning law has been extended beyond use of the land and has overreached into regulating the user of the land and their relationships. When zoning regulates users, it serves as a tool of oppression. Segregating land uses became a permissible substitute “for those who sought to segregate people.”<sup>103</sup> Local government has long attempted through 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.”<sup>104</sup> 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.<sup>105</sup> Prior to the middle of the 20<sup>th</sup> 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.<sup>106</sup> 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.<sup>107</sup>

As an illustration of the range and variety of how municipalities define family under their single-family zoning regulations, there are at least seven different definitions of family (sometimes with multiple definitions per jurisdiction) across nine geographically distributed counties<sup>108</sup> and 130 municipalities in rural Pennsylvania.<sup>109</sup>

---

<sup>103</sup> *Zoned for Injustice: Moving Beyond Zoning and Market-Based Land Preservation to Address Rural Poverty*, *supra* note 47 at 87.

<sup>104</sup> THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA, *supra* note 84 at 45.

<sup>105</sup> See *Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn*, *supra* note 102 at 2444.

<sup>106</sup> 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. 2, 150 (Winter 2007). See also *City of Syracuse v. Snow*, 205 N.Y.S. 785, 572 (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).

<sup>107</sup> See *Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn*, *supra* note 102 at 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.”).

<sup>108</sup> 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.

<sup>109</sup> Research and citations to local ordinances on file with author.

A single individual <sup>110</sup>	Two or more persons related by blood, marriage or adoption <sup>111</sup>	Not more than three unrelated persons <sup>112</sup>	Not more than four unrelated persons <sup>113</sup>	Not more than five unrelated persons <sup>114</sup>	Not more than eight related or unrelated persons who are a functional family <sup>115</sup>	Any # of individuals living and cooking together as a single housekeeping unit <sup>116</sup>
85.38%	84.62%	35.38%	19.23%	13.85%	6.15%	17.69%

The vast majority of these 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 3-5 unrelated persons range). 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<sup>117</sup>, fraternity, hotel, or similar living arrangement. Interestingly, in the more metropolitan areas of the state, the definition of family is even more restrictive than rural areas. For example, in Pittsburgh, family or household members are defined as “spouses or persons who have been spouses, persons living as spouses or who have lived as spouses, parents with children, other persons related by blood or marriage, current or former sexual or intimate partners or persons who share biological parenthood.”<sup>118</sup> The Pittsburgh ordinance does not even contemplate unrelated folks residing together in a single-family dwelling unit. Philadelphia restricts family to three unrelated persons who are “living as a single household unit using housekeeping facilities in common.”<sup>119</sup>

<sup>110</sup> *E.g.*, CONEWAGO, PA., GEN. LEG., ART. I § 155-13.

<sup>111</sup> *E.g.*, Fairfield, PA., Zoning Ordinance art. II, § 2.2 (2007).

<sup>112</sup> *E.g.*, BEAVER, PA., GEN. LEG. § 27-202 (2019).

<sup>113</sup> *E.g.*, CLINTON, PA., GEN. LEG., ART. VII § 185-80 (2015).

<sup>114</sup> *E.g.*, Ross, Pa., Gen. Leg. § 27-202 (2001).

<sup>115</sup> *E.g.*, PLAMYRA, PA., GEN. LEG., ART. I, § 380-13 (2015).

<sup>116</sup> *E.g.*, CUMBERLAND, PA., GEN. LEG., § 27-201 (2013).

<sup>117</sup> Only 9% of these jurisdictions permit group homes in single-family zones so long as no more than eight people are living together with supervision.

<sup>118</sup> 23 PA.C.S. § 6101 et seq.

<sup>119</sup> PHILADELPHIA CITY, PA, MUN. CODE §14-102.

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 utilizing a rational basis review and found that there is no fundamental right to reside with unrelated people.<sup>120</sup> 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.<sup>121</sup> Despite there being no federal protections for unrelated households who seek to reside together in a single-family dwelling, state courts have found state due process violations when local governments restrict unrelated or functional family households.<sup>122</sup>

### 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 in-home dynamics to give guidance on how many people should be permitted to reside in each bedroom. This practice of regulating acceptable sleeping arrangements has been endorsed by the federal government in the form of its reasonable occupancy standards which are both embedded within rules surrounding housing quality inspection standards for participation in federal programs<sup>123</sup> as well as a codified exemption to familial discrimination under the federal Fair Housing Act.<sup>124</sup> The general industry standard for occupancy is two persons for bedroom although HUD has not endorsed a particular definition of what constitutes a

---

<sup>120</sup> *Village of Belle Terre*, 416 U.S. 1 at 7.

<sup>121</sup> *Moore*, 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).

<sup>122</sup> *Compare Schwartz v. Philadelphia Zoning Board 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 functional families are treated differently than traditional families under zoning law).

<sup>123</sup> See 24 CFR § 982.401.

<sup>124</sup> 42 U.S.C. §3607(b)(1) (2004).

reasonable governmental occupancy restriction.<sup>125</sup> In shared housing arrangements, HUD mandates that the 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.<sup>126</sup> Additionally, a zero or one-bedroom unit may not be used for shared housing.<sup>127</sup>

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.<sup>128</sup> 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.<sup>129</sup> Although overcrowding is a health and safety concern, occupancy restrictions are more often motivated by “quality of life” issues such as noise, parking, and congestion.<sup>130</sup> While it was and continues to be 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.”<sup>131</sup> Generally, courts as well as HUD has been deferential to local government’s ability to regulate internal density of dwellings through either

---

<sup>125</sup> *Clarifying the Federal Fair Housing Act’s Exemption for Reasonable Occupancy Restrictions*, *supra* note 102 at 1227, 1255 (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. 245 (December 22, 1998) which implements The 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; (5) other relevant factors.

<sup>126</sup> 24 CFR 982.618(d)(ii)

<sup>127</sup> 24 CFR 982.618(d)(iii)

<sup>128</sup> *See, e.g.*, THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA, *supra* note 84 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.”)

<sup>129</sup> *See Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, *supra* note 93 at 308.

<sup>130</sup> *See Clarifying the Federal Fair Housing Act’s exemption for Reasonably Occupancy Restrictions*, *supra* note 102 at 1257.

<sup>131</sup> Daniel Edward Guzman, *There Be No Shelter Here: Anti-Immigrant Housing Ordinances and Comprehensive Reform*, 20 CORNELL J.L. & PUB. POL’Y 2, 399 (2010).

minimum square footage per occupant or a maximum number of occupants per bedroom.<sup>132</sup>

Occupancy codes have cultural implications which result in privileging particular cultural values around sleeping arrangements and shared space.<sup>133</sup> These regulations have an impact on what housing units are available to larger households with greater than four members.<sup>134</sup> There is inconsistent scientific research on the relationship between overcrowding and health.<sup>135</sup> 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)"<sup>136</sup> 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.<sup>137</sup> But there is a movement underfoot to elevate the values of sharing and interdependency as "equally legitimate as the preference for privacy."<sup>138</sup> As I will discuss further in section IV.F., individual privacy rights manifest through several exemptions to federal housing discrimination law.

#### D. Impact on Taxes & Benefits Eligibility

---

<sup>132</sup> *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, 489 (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.)

<sup>133</sup> *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, *supra* note 93 at 302.

<sup>134</sup> *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, *supra* note 93 at 302.

<sup>135</sup> Sherry Ahrentzen, *Double Indemnity or Double Delight? The Health Consequences of Shared Housing and 'Doubling Up'*, 59 J. OF SOC. ISSUES 3, 549 (2003).

<sup>136</sup> *Double Indemnity or Double Delight? The Health Consequences of Shared Housing and 'Doubling Up'*, *supra* note 135 at 549.

<sup>137</sup> See *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, *supra* note 93 at 310.

<sup>138</sup> See *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, *supra* note 93 at 314.

Older homeowners are often motivated to home share for financial reasons. 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. Individual Supplemental Security Income recipients who live alone experience higher poverty rates.<sup>139</sup> The majority of those 65 and over own their home, but households of color have lower rates of homeownership.<sup>140</sup> Shared housing arrangements have implications for both homeowners' property taxes as well as income tax liability and public benefits eligibility.

As a domain of local government, real property is taxed at a certain percentage of its assessed value.<sup>141</sup> 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 different use such as shared housing or conversion from office space to residential housing.<sup>142</sup> Those homeowners interested in participating in a shared housing arrangement should be aware that if the space is improved or 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. Currently, those in Pennsylvania who are 65 and older or widowers 50 and older with an income of \$35,000 a year or less are eligible for a rebate.<sup>143</sup> Some renters also qualify.<sup>144</sup> In order to account for inflation and Social Security cost of living increases, the Pennsylvania legislature has introduced bills which propose to raise the income eligibility level from \$35,000 to \$50,000 for the state property tax rebate program.<sup>145</sup> The bills

---

<sup>139</sup> Melissa Koenig & Kalman Rupp, SSI Recipients in Households and Families with Multiple Recipients: Prevalence and Poverty Outcomes, 65 Soc. Security Bulletin 2, 14 (2002).

<sup>140</sup> 81% of white 65+ persons own a home versus 61% of white 65+ households. See *The State of The Nation's Housing 2021*, JOINT CENTER FOR HOUS. STUDIES OF HARVARD UNIVERSITY, 23 (2021) (see figure 23) [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_State\\_Nations\\_Housing\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf).

<sup>141</sup> See e.g., 53 P.S. § 8563 (1998).

<sup>142</sup> See Press Release, Office of the Mayor, Mayor Adams Unveils Recommendations to Convert Underused Offices into Homes (Jan. 9, 2023), <https://www.nyc.gov/office-of-the-mayor/news/022-23/mayor-adams-recommendations-convert-underused-offices-homes>.

<sup>143</sup> Taxpayer Relief Act, HB 39, 1st Spec. Sess., P.L.1873, No.1 (Pa. 2006).

<sup>144</sup> *Id.* Eligible renters making up to \$15,000 annually may qualify.

<sup>145</sup> Pa. SB 182, Reg. Sess. (Pa. 2023); Pa. HB 113, Reg. Sess. (Pa. 2023).



have bipartisan support and are expected to pass. Other tax relief for older residents is available in Philadelphia through a real estate tax freeze and a 40% discount rate in Pittsburgh.<sup>146</sup>

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 programmatic eligibility limits.<sup>147</sup> Interesting, Pennsylvania's Supplemental Nutrition Assistance Program (SNAP) program rules distinguish between rental income and room rent when determining income eligibility for the program.<sup>148</sup> Profit from rental property can be either earned or unearned income while renting a room like in a home share arrangement is considered "earned self-employment income" which may not be subject to the same favorable deductions as rental income.<sup>149</sup> The federal SNAP regulations do permit "roomers" to participate in the SNAP program as a separate household.<sup>150</sup> 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.<sup>151</sup> Lastly, rental income would be subject to tax liability under both state and federal taxes.<sup>152</sup>

### E. Landlord Tenant Protections

---

<sup>146</sup> See CITY OF PHILADELPHIA, *Apply for the low-income senior citizen Real Estate Tax freeze*, <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/> (last visited May 29, 2023); Senior Tax Relief, HB 659, Gen. Assemb. Reg. Sess., P.L. 529, No. 77 (Pa. 1993).

<sup>147</sup> 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 1. See 2023 Poverty Guidelines: 48 Contiguous States (all states except Alaska and Hawaii), <https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/tailed-guidelines-2023.pdf> (last visited May 29, 2023).

<sup>148</sup> See PA Dep't of Hum. Sev., 550.2 *Earned Income*, SNAP HANDBOOK (2012), [http://services.dpw.state.pa.us/oimpolicymanuals/snap/index.htm#t=550\\_Income%2F550\\_2\\_Earned\\_Income.htm](http://services.dpw.state.pa.us/oimpolicymanuals/snap/index.htm#t=550_Income%2F550_2_Earned_Income.htm).

<sup>149</sup> 550.2 *Earned Income*, *supra* note 148.

<sup>150</sup> 7 C.F.R. §273.1(b)(5).

<sup>151</sup> *U. S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 544-45 (1973).

<sup>152</sup> See 61 Pa. Code § 101.8 (c). See also IRS, *Rental Income and Expenses - Real Estate Tax Tips* (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.>

Shared housing models that employ a valid written lease are afforded much more protection under landlord-tenant law than informal shared housing agreements. Informal arrangements lack a written shared use agreement and are often illegal in that these arrangements violate zoning, occupancy, and health and safety codes<sup>153</sup> as discussed above. When shared housing is deemed illegal, there is often no way to establish a landlord-tenant relationship between the parties.<sup>154</sup> This inferior status as non-tenant residential occupant excludes many informal shared housing dwellers from landlord tenant protections such as the warranty of habitability and as a result these occupants have no recourse against self-help evictions by landlords.<sup>155</sup>

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. In another model, two home seekers could decide to share housing and rent from a third-party to become housemates. In both cases, all parties could be protected by state landlord tenant laws. The reach of those protections may differ depending upon the formality of the arrangement. Those shared housing dwellers who can be 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.<sup>156</sup> 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. Additional items that should be negotiated as part of a shared living arrangement or lease are who is paying for utilities, whether a security deposit will be required, and which space is to be shared and how and which spaces will remain private. Spatial use agreements are important because the right to privacy transcends both informal and formal shared living arrangements. In *State v. Coles*, the court held that a landlord cannot

---

<sup>153</sup> 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. & POL'Y 159, 188 (2021).

<sup>154</sup> *Fazio v. Kelly*, No. 35214/03, NY slip op. 51276(U) at \*11, (N.Y. Civ. Ct. Sept. 10, 2003).

<sup>155</sup> Matthew 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).

<sup>156</sup> See Pennsylvania Office of Attorney General, *Consumer Guide to Tenant and Landlord Rights*, 13 (June 2022), <https://www.attorneygeneral.gov/wp-content/uploads/2022/06/OAG-Consumer-Guide-Tenant-Landlord-Rights-v.13-web-version.pdf>.

consent to a search of a tenant's separate room.<sup>157</sup> The entwinement of privacy rights and lack of fair housing protections in shared housing is explored in Section IV.F.

### F. Fair Housing Implications

Although the federal Fair Housing Act (FHA) and its state counterparts prohibit discrimination in the rental of a housing unit<sup>158</sup>, the configuration of many shared housing arrangements precludes its occupants from protection against discrimination. Known as the “Mrs. Murphy” exemption due to the limitation of the statute’s reach to boardinghouses<sup>159</sup>, the FHA does not apply to owner-occupied buildings with four units or less that are occupied by “families living independently of each other.”<sup>160</sup> Similarly, the Pennsylvania Human Relations Act (PHRA) does not apply to owner-occupied personal residences with two units or less.<sup>161</sup> Additionally, a single-family house rented by the homeowner without an agent is exempt from all the provisions of the FHA except for Section 804(c) related to discriminatory advertisements.<sup>162</sup>

Whether Fair Housing protections extend to shared housing arrangements depends upon the size of the dwelling, whether it is owner-occupied and how the arrangement is structured. In many instances, home share programs will be exempt due to their small unit size and the fact that many arrangements are with homeowners themselves who reside onsite. Furthermore, the 9<sup>th</sup> 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.<sup>163</sup> 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 individual roommates may discriminate in selection of

---

<sup>157</sup> *State v. Coles*, No. A-2954-10T2, 2012 N.J. Super. Unpub. LEXIS 806 at \*15 (Super. Ct. App. Div. Apr. 11, 2012).

<sup>158</sup> FAIR HOUSING, U.S. Code 42 §§ 3601-3631 (2011); The Pennsylvania Human Relations Act, 43 P.S. § 955(h)(1)-(11) (1995).

<sup>159</sup> See 114 Cong. Rec. 2495, 3345 (1968)).

<sup>160</sup> 42 U.S.C. § 3603(b)(2).

<sup>161</sup> 43 P.S. § 954 (i),(k).

<sup>162</sup> 42 U.S.C. § 3603(b)(1).

<sup>163</sup> *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1220 (9th Cir. 2012).

roommates, landlords who rent shared living units are not exempt from the FHA.<sup>164</sup>

Here's where Fair Housing law 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. Some scholars have criticized the 9<sup>th</sup> Circuit's *Roommate.com* decision as being "poorly reasoned, weakly supported, and poorly drafted" in addition to being overbroad.<sup>165</sup> The 9<sup>th</sup> 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 at the front door."<sup>166</sup> Professor Iglesias forecast that the *Roommate.com* decision would "be a potential problem for municipalities' regulation of unrelated persons in 'single-family zones'."<sup>167</sup> The 9<sup>th</sup> Circuit's overly broad pronouncement that all roommate relationships are sufficiently intimate to warrant freedom of association constitutional protection conflicts with Supreme Court precedent from 1974 that forms a basis of zoning law in many states.<sup>168</sup>

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.<sup>169</sup> Professor Iglesias argues that the court's framing of all roommate relationships as those of "intimate companionship" 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.<sup>170</sup> Others like 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

---

<sup>164</sup> *Haws v. Norman*, No. 2:15-cv-00422-EJF, 2017 U.S. Dist. LEXIS 154589, at \*10 (D. Utah Sep. 20, 2017).

<sup>165</sup> Tim Iglesias, *Does Fair Housing Law Apply to 'Shared Living Situations'? Or, the Trouble with Roommates*, 22 J. OF AFFORDABLE HOUS. & CMTY. DEV. L 2, 113 (2014).

<sup>166</sup> *Roommate.com, LLC*, 666 F.3d 1216 at 1220.

<sup>167</sup> *The Trouble with Roommates*, *supra* note 167 at 113.

<sup>168</sup> *The Trouble with Roommates*, *supra* note 167 at 137.

<sup>169</sup> *Compare Belle Terre*, 416 U.S. at 7-8, with *City of East Cleveland*, 431 U.S. at 498-99 (stating related people do have a constitutional right to live together and any governmental attempts to restrict this are subject to strict scrutiny analysis).

<sup>170</sup> *The Trouble with Roommates*, *supra* note 167 at 133.

constitutional association protections.<sup>171</sup> The implications of Professor Oliveri's argument is that unrelated shared housing roommates are entitled to discriminate, but landlords or housing providers themselves should remain subject to FHA antidiscrimination provisions.<sup>172</sup> Again, in shared housing arrangements, the line between housing provider and roommate can become blurred. Professor Iglesias recommends that those who seek an intimate roommate relationship in a shared living arrangement should advertise by word of mouth or in personal ads so that they can express personal preferences in the proper forum.<sup>173</sup> All other roommate relationships can be advertised in standard channels, but the roommate should not express discriminatory preferences or discriminate in the selection of their roommate.<sup>174</sup>

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 history of substance abuse, certain criminal records, lack of financial stability, if their residence is deemed unsafe or unsanitary, if they don't own their residence.<sup>175</sup> Certainly since organizations have such broad discretion during the matching process, bias can manifest as a determination that someone is not a "good fit" for the program. Good fit ordinarily entails things such as lifestyle habits and preferences which can also include personal history and identity.<sup>176</sup> Identities could include protected classes such as gender and families with children and non-protected classes such as those with pets or smokers. These categories of ineligibility 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. Certainly, cognitive biases influence decision-making when cultivating a home share match. 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.

---

<sup>171</sup> *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, *supra* note 81 at 1429.

<sup>172</sup> *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, *supra* note 81 at 1451.

<sup>173</sup> *The Trouble with Roommates*, *supra* note 167 at 146.

<sup>174</sup> *The Trouble with Roommates*, *supra* note 167 at 146.

<sup>175</sup> *Sharing Space to Age in Community: A Mixed Methods Study of Homeshare Organizations*, *supra* note 79 at 820.

<sup>176</sup> *Sharing Space to Age in Community: A Mixed Methods Study of Homeshare Organizations*, *supra* note 79 at 821.

One final FHA exemption may be worth considering as many shared housing arrangements are targeted towards or intended to benefit older persons. If the shared housing was created pursuant to a specific state or federal program, it is conceivable that it could be eligible as Housing for Older Persons which would exempt it from familial status liability under the FHA. In order to maintain this exemption, it would have to be solely occupied by persons 62 years and older or operated and intended for persons 55 years and older with 80% of the units occupied by at least one household member 55 years and older.

## V. Lack of Financing & Funding Options

There are several challenges with financing shared housing. The first issue relates to funding the formal home-share organizations and programs and the second issue relates to financing the residence among the sharers. 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.<sup>177</sup> Home share organization leaders report that since volume is not a goal of shared housing matching, it is often difficult to garner investor or philanthropic interest in a program that requires significant resources and labor in cultivating a successful match, but does not always result in thousands of matches.<sup>178</sup> Home share programs require significant human capital resources and often there are no sufficient people on staff to meet the demand. Funding for the Pennsylvania 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 still in a pilot stage.<sup>179</sup>

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. There is some federal funding available to subsidize rent in shared housing units for eligible low-income tenants. HUD defines shared housing as a special housing type under its public housing program.<sup>180</sup> HUD's Housing Choice Vouchers (HCVs) which are administered by public housing agencies may be used to pay a landlord in a shared housing

---

<sup>177</sup> *Sharing Space to Age in Community: A Mixed Methods Study of Homeshare Organizations*, *supra* note 79 at 823.

<sup>178</sup> *See Sharing Space to Age in Community: A Mixed Methods Study of Homeshare Organizations*, *supra* note 79 at 823.

<sup>179</sup> State Plan on Aging, *supra* note X at 15.

<sup>180</sup> 24 CFR §982.601(b)(1).

arrangement.<sup>181</sup> HUD has also suggested 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.<sup>182</sup> 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.”<sup>183</sup> 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.

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.<sup>184</sup> In order to qualify for tenant-based public housing rental assistance, the entire shared housing dwelling must meet HUD’s Housing Quality Standards.<sup>185</sup> In shared housing, HUD requires that assisted families have access to “a living room, a bathroom, and food preparation and refuse disposal facilities”<sup>186</sup> and private non-shared space must contain at least one bedroom for every two people in the assisted family.<sup>187</sup> These occupancy requirements mean that for an assisted family that is comprised of a married couple with a 2-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 3-bedroom shared housing unit).

In order for shared housing arrangements to be accommodated from existing housing stock, some rehabilitation might be necessary. Furthermore, in order for older adults to age successfully in place and accommodate a home-share situation, additional modifications may need to be made. Home renovations to facilitate shared housing opportunities might be eligible for funding under the Federal Housing Administration 203(k)

---

<sup>181</sup> See generally Notice Use of Shared Housing in HCV, HUD PIH 2021-05 (Jan. 15, 2021). In 2004, Homeshare Care received a HUD grant to provide a voucher-like rental stipend as part of its homeshare program. See *Homeshare Program*, SHARED HOUSING CENTER, <https://www.sharedhousing.org/homeshare.html> (last visited May 30, 2023).

<sup>182</sup> See Home Sharing, U.S. DEP’T OF HOUS. AND URBAN DEV., OFF. OF POLICY DEV. AND RSCH., <https://www.huduser.gov/portal/casestudies/study-09282016-1.html> (last visited May 30, 2023).

<sup>183</sup> HUD PIH 2021-05, *supra* note 181 at 1.

<sup>184</sup> 24 CFR §982.615(b)(3).

<sup>185</sup> 24 CFR 982.618(a).

<sup>186</sup> 24 CFR § 982.618(c).

<sup>187</sup> 24 CFR §982.618(d)(2)(ii).

program or the HOME Investment Partnerships Program.<sup>188</sup> Under the 203(k) program, borrowers finance the cost of rehabilitation through a single mortgage where the rehabilitation costs are at least \$5,000.<sup>189</sup> 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.. Another option is the HomeStyle loan guaranteed by Fannie Mae.<sup>190</sup> American Rescue Plan funds have also been used for home repair and rehabilitation.<sup>191</sup> Despite a 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 or property appraisal will not align based on lack of comparable units.<sup>192</sup>

In a shift towards recognizing intergenerational household configurations, HUD has set aside \$15 million of its 2022 Section 202 Supportive Housing for the Elderly program funding to assist projects that fund housing programs with grandparents or elderly relatives raising children.<sup>193</sup> Typically, the 202 program requires that project units be efficiencies or one-bedroom units<sup>194</sup>, applications for intergenerational funding must have at least two separate bedrooms in the unit.<sup>195</sup> Funding priority is given to those projects with greater than five intergenerational units or more than 20% of the assisted units being designated as intergenerational. Despite the 202 program funding rising slightly in 2022 over 2021, only 35 projects will be awarded funds which still leaves plenty of funding need for intergenerational and shared housing projects.

---

<sup>188</sup> See 12 U.S.C § 1709(4k).

<sup>189</sup> 24 C.F.R. § 203.50. See also *203(K) Rehab Mortgage Insurance*, U.S. DEP'T OF HOUS. AND URBAN DEV., [https://www.hud.gov/program\\_offices/housing/sfh/203k/203k--df](https://www.hud.gov/program_offices/housing/sfh/203k/203k--df) (last visited May 30, 2023).

<sup>190</sup> *HomeStyle Renovation Mortgage*, FANNIE MAE (2022), <https://singlefamily.fanniemae.com/media/8271/display>.

<sup>191</sup> \$125 million of PA ARPA funds are allocated towards 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 COMM. AND ECON. DEV., <https://dced.pa.gov/programs/covid-19-arpa-whole-home-repairs-program/> (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> (last visited May 30, 2023).

<sup>192</sup> ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at 17.

<sup>193</sup> ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at 18.

<sup>194</sup> 24 CFR §891.210

<sup>195</sup> ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at 18.



As previously discussed, LIHTCs are the primary vehicle for financing affordable housing, but rural developments are at a distinct disadvantage primarily from a density standpoint. The U.S. Department of the Treasury provides oversight of the LIHTC program and promulgates relevant regulations. Under the Treasury regulations, a LIHTC unit is defined as “any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation.”<sup>196</sup> All of these facilities must be “separate and distinct” from other apartments in order to qualify for LIHTCs.<sup>197</sup> 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. There is an exception given for SROs<sup>198</sup> although few LIHTC developments have included SROs since their decline and demolition began in the 1960s.

## VI. Benefits of Shared Housing

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 or inadequate income – the result of an emergency situation or need. Home seekers tend to be more motivated by the cost savings of home sharing than homeowners tend to be by the reward of additional income.<sup>199</sup> While financial necessity is a reason why some folks embrace shared housing there are many others as well. Researchers have identified several reasons why folks decide to “double-up”: (1) residential improvement or enhancement of quality and location of housing; (2) social support which includes instrumental and emotional support; and (3) caretaking.<sup>200</sup>

“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.”<sup>201</sup> 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

---

<sup>196</sup> 26 CFR § 1.103-8 (b)(8)(i).

<sup>197</sup> *Id.*

<sup>198</sup> 26 U.S.C. §42(i)(3)(B)(iv).

<sup>199</sup> See Nicholas L. Danigelis & Alfred P. Fengler, *Homeshaaring: How Social Exchange Helps Elders Live at Home*, 30 GERONTOLOGIST 2, 168 (April 1990).

<sup>200</sup> *Double Indemnity or Double Delight?*, *supra* note 135 at 551-552.

<sup>201</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6 at 7.

access better schools and jobs. With the rise of single-person households, the aging of our population and the desire of these folks to age in place, we are at a real risk of experiencing a loneliness epidemic that will negatively impact health. Experts also note that social isolation is as detrimental to our health as smoking fifteen cigarettes per day.<sup>202</sup>

Researchers recently examined the relationship between mental health and rental shared living arrangements among young single adults living in Korea.<sup>203</sup> The study found that those young adult “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.”<sup>204</sup> 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. Stronger social support between residents and better housing quality conditions were found among those residents who had a preference for shared living.<sup>205</sup>

Another group of researchers examined the impacts of home-sharing on older adults aged 55 and older and similarly found that elder home providers benefited from participating in a shared housing agreement.<sup>206</sup> 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 other things such as healthcare needs, rent/mortgage/upkeep/tax payments and utilities.<sup>207</sup> Challenges with home-share arrangements were also noted including “navigating boundaries, in terms of sharing space and time, and navigating interpersonal boundaries in terms of lack of familiarity and difficulties with communication.”<sup>208</sup>

---

<sup>202</sup> See Amanda Seitz, *Loneliness poses health risks as deadly as smoking, U.S. surgeon general says*, PBS NEWSHOUR (May 2, 2023), <https://www.pbs.org/newshour/health/loneliness-poses-health-risks-as-deadly-as-smoking-u-s-surgeon-general-says>. See also Julianne Holt-Lunstad et al., *Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-analytic Review*, 10 PERSP. ON PSYCHOL. SCI. 2, 227-237 (March 2015).

<sup>203</sup> Jihun Oh & Jeongseob Kim, *Relationship between Mental Health and Housing Sharing: Evidence from Seoul*, 18 INT’L J. OF ENVTL. RSCH. AND PUB. HEALTH 5, 2495 (2021).

<sup>204</sup> *Relationship between Mental Health and Housing Sharing*, *supra* note 203 at 10.

<sup>205</sup> *Relationship between Mental Health and Housing Sharing*, *supra* note 203 at 10.

<sup>206</sup> Laura Martinez et al., *More Than Just a Room: A Scoping Review of the Impact of Homesharing for Older Adults*, 4 INNOVATION IN AGING 2, 5 (2020).

<sup>207</sup> *More Than Just a Room*, *supra* note 206 at 6.

<sup>208</sup> *More Than Just a Room*, *supra* note 206 at 9.

Shared housing is also beneficial from a community and government resources perspective. Single-family structures constitute the majority (76%) of Pennsylvania homes.<sup>209</sup> There are approximately 33.6 million spare bedrooms in the United States which breaks down to 9.4% more bedrooms than people.<sup>210</sup> Utilizing these unused spaces does not require building new infrastructure and makes home-sharing a less costly option to development or even rental subsidy. 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.<sup>211</sup> Home-sharing arrangements are also strengthened when formal matching services are utilized and case management is available to help mitigate issues such as changing needs or possible elder abuse.<sup>212</sup>

In California, one of the most expensive housing markets in the country, it costs on average \$480,000 to construct a new unit of affordable housing, an increase of 17 percent over an eleven-year period.<sup>213</sup> One of the primary funding mechanisms for developing affordable housing is Low-Income Housing Tax Credits which are administered through state housing finance agencies. Generally, there are many more applications for LIHTCs than funding available to support the development of these units.<sup>214</sup> Although there may be some costs associated with conversion or

---

<sup>209</sup> *Pennsylvania Comprehensive Housing Study*, PA HOUS. FIN. AGENCY 13 (March 2020), [https://www.phfa.org/forms/housing\\_study/2020/pennsylvania-comprehensive-housing-study-full-report.pdf](https://www.phfa.org/forms/housing_study/2020/pennsylvania-comprehensive-housing-study-full-report.pdf).

<sup>210</sup> See ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at 7.

<sup>211</sup> See *Homesharing: How Social Exchange Helps Elders Live at Home*, *supra* note 199 at 169-170.

<sup>212</sup> *Homesharing: How Social Exchange Helps Elders Live at Home*, *supra* note 199 at 169. See also *More Than Just a Room*, *supra* note 206 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).

<sup>213</sup> Carolina Reid, *The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program*, TERNER CENTER FOR HOUS. INNOVATION 6 (March 2020), [https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/LIHTC\\_Construction\\_Costs\\_2020.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/LIHTC_Construction_Costs_2020.pdf).

<sup>214</sup> 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., *2021 Low Income Housing Tax Credit/PennHOMES Applications Received*, PA HOUS. FIN. AGENCY (March 5, 2021), <https://www.novoco.com/sites/default/files/atoms/files/pennsylvania-lihtc-applications-received-2021-03052021.pdf>; *2021 Low Income Housing Tax Credit/PennHOMES and National Housing Trust Fund Awards*, PA HOUS. FIN. AGENCY (Oct. 14, 2022), <https://www.novoco.com/sites/default/files/atoms/files/pennsylvania-lihtc-awards-2021-10142021.pdf>.

rehabilitation, shared housing densifies existing housing stock and can infill communities without the costs associated with new unit development.

## 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. Community planning, design and development are overlaid onto this values structure and are influenced by access to resources. 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. In order to help catalyze a shift in the treatment of shared housing, we need more folks to see and experience shared housing models in their communities so there is an opportunity for change in values.<sup>215</sup> At the local level through zoning, land use, and occupancy regulation modernization, legal impediments to shared housing can be alleviated. In addition to local or state regulatory reform, policy reforms that incentivize shared housing and additional funding and shared equity financing methods would open this housing opportunity to a greater swath of the population including those with less income. 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 of the potential of this land to host multiple residents. Rethinking or eliminating single-family zoning is one option. Scholars have argued that the law should look for places to remove land use restrictions.<sup>216</sup> Restrictive land use and zoning regulations have been linked to higher housing prices.<sup>217</sup> Land use restrictions which exclude unrelated folks from residing together in a single-family dwelling are antiquated and disconnected from current patterns of modern living.

---

<sup>215</sup> UNDER ONE ROOF: ISSUES AND INNOVATIONS IN SHARED HOUSING, *supra* note 6 at 132.

<sup>216</sup> THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA, *supra* note 84 at 196.

<sup>217</sup> Edward Glaeser & Joseph Gyourko, *The Impact of Building Restrictions on Housing Affordability*, 7 WHARTON REAL ESTATE REVIEW 5-14 (2003).

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 dwelling unit is often illegal in single-family zones although that is changing as more jurisdictions adopt ADU laws.<sup>218</sup> 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 of existing housing stock through more shared housing arrangements. 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 lot sizes without creating unsafe and unsanitary habitation.”<sup>219</sup> 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.<sup>220</sup> The APA also recommends expanding residential use types to include missing middle housing which “is more available to America’s diverse, aging population.”<sup>221</sup> 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).”<sup>222</sup> Other ways that municipalities can help promote shared housing is through streamlined approval processes for conversions and by eliminating special permitting requirements and fees. But removing regulatory barriers absent other financial support and incentives will not be enough and may continue to further race and income-based disparities.

---

<sup>218</sup> 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 CENTER (March 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.>

<sup>219</sup> See ASSESSMENTS OF SHARED HOUS. IN THE UNITED STATES, *supra* note 53 at page 3 (citing updates to fireproofing, ventilation and public health).

<sup>220</sup> *Equity in Zoning Policy Guide*, AMERICAN PLANNING ASSOCIATION 20 (Dec. 20, 2022), [https://planning-org-uploaded-media.s3.amazonaws.com/publication/download\\_pdf/Equity-in-Zoning-Policy-Guidev2.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Equity-in-Zoning-Policy-Guidev2.pdf)

<sup>221</sup> *Equity in Zoning Policy Guide*, *supra* note 220 at 22.

<sup>222</sup> *Equity in Zoning Policy Guide*, *supra* note 220 at 22.

## B. Policy Incentives, Financing, and Government Funding

More could be done to incentivize shared housing arrangements both on behalf of homeowners, home seekers and shared housing developers through tax incentives and 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, 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 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 landlords”<sup>223</sup> to earn up to £7,500 per year tax-free from renting out a furnished accommodation in their homes.<sup>224</sup> 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.<sup>225</sup> 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 could be conducted to determine 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 rental

---

<sup>223</sup> See *HS223 Rent a Room Scheme*, HM REVENUE & CUSTOMS (April 6, 2023), <https://www.gov.uk/government/publications/rent-a-room-for-traders-hs223-self-assessment-helpsheet/hs223-rent-a-room-scheme-2022>.

<sup>224</sup> Income Tax (Trading and Other Income) Act 2005, c. 5, § 789 (Eng.); Income Tax (Limit for Rent-a-Room Relief) 2015, Stat. R & O 2015/1539, art. 2, ¶ 2 (Eng.).

<sup>225</sup> See *Rent a room relief: summary of responses*, HM TREASURY (July 2018), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/723126/rent\\_a\\_room\\_relief\\_summary\\_of\\_responses\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723126/rent_a_room_relief_summary_of_responses_web.pdf).

housing is taxed at 75% of the market rate value.<sup>226</sup> 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.<sup>227</sup> Other property tax and rent rebate programs already in existence could be expanded so that if a home share resident who meets the residency requirements in terms of age is sharing with someone who meets either income or disability definition, the homeowner/sharer would be eligible for a property tax rebate (even if they have a higher income level).

Traditional financing options overlook shared housing arrangements. 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. Lenders should move towards a more equitable approach in recognizing different household formations and ownership structures for financing. There are limited federal subsidy dollars available to share equity homeownership models. HOME and Community Development Block Grant funds have been used for shared equity homeownership models, specifically community land trusts.<sup>228</sup> In addition to thinking beyond traditional ownership structure and lending models, underwriting guidelines may need to be updated for single-family dwellings that are to be used as shared housing. For example, in the ADU space, some credit unions in California are permitting future rent and future value of the ADU unit to be considered as part of the underwriting process for ADU construction loans.<sup>229</sup> Similarly, if a home sharer applies for a refinance or home equity 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, not-for-profit, a community housing development organization (CHDO), or a community land trust. The entity could subsidize construction or renovation of the property in exchange for a

---

<sup>226</sup> See Minn. Stat. §273.128 (2022).

<sup>227</sup> Affordable Housing Unit Tax Exemption Act, Gen. Assemb. Reg. Sess., P.L. 703, No. 58 §201 (Pa 2022).

<sup>228</sup> Kristin King-Ries, *Advocating for Community Land Trusts*, 31 J. OF AFFORDABLE HOUS. 3, 384 (2023) (discussing the scarcity of federal funding for community land trust and other shared equity homeownership models).

<sup>229</sup> *ADUS for all*, *supra* note 98 at 10.

use agreement that the dwelling be used as shared housing for a particular period of time.<sup>230</sup> 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. Demand for landlords that are willing to accept Section 8 voucher holders remains high and home sharers could receive financial assistance or funding support in exchange for renting to a Section 8 voucher holder. Ava Housing, an innovative program in Ireland, combines aging-in-place modifications with renovations for a second unit in the home.<sup>231</sup> Ava Housing provides project management for the retrofit and after renovation, ongoing management agent services for the second unit.<sup>232</sup> 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.<sup>233</sup> 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. There is also a high need for increased funding in this space. In California, the state housing finance agency initiated a \$40,000 grant program for pre-development and closing costs associated with new ADU construction.<sup>234</sup> California allocated \$100 million for this ADU grant program for low-to-moderate income homeowners and the funding was quickly depleted<sup>235</sup> underscoring 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. The United States has a housing supply problem that experts link to issues with construction materials and labor,

---

<sup>230</sup> See e.g., Stephanie Firestone and Esther Greenhouse, *Building Equity through Shared Equity ADUs*, AARP (2022), <https://www.aarpinternational.org/file%20library/build%20equity/aarp-sharedequity-casestudy-final.pdf>.

<sup>231</sup> See Stephanie Firestone and Esther Greenhouse, *Rightsizing in Place*, AARP (2021), <https://www.aarpinternational.org/file%20library/build%20equity/aarp-principlesinaction-avahousing-casestudy-final.pdf>.

<sup>232</sup> *Rightsizing in Place supra* note 231 at 3.

<sup>233</sup> *Rightsizing in Place supra* note 231 at 4.

<sup>234</sup> See generally *ADU Grant Program, supra* note 99.

<sup>235</sup> See CAL. HOUS. FIN.AGENCY, *CalHFA will Pause the ADU Grant Program*, SINGLE FAMILY LENDING PROGRAM BULLETIN (Dec. 05, 2022), <https://www.calhfa.ca.gov/adu/>.



lending, and land availability.<sup>236</sup> Despite these problems, historic government promotion and 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. There is social stigma against those in intergenerational or two-family homes as studies show that many people assume these residents earn low incomes and cannot afford their own separate home.<sup>237</sup> Despite the stigma, multigenerational home design is catching on, although new construction models are targeted to and often affordable only to those with higher incomes.<sup>238</sup>

The codification of state legislation that either recognizes and 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. In this sense, the law can seek to change attitudes.<sup>239</sup> This formal recognition or defining of shared housing on a state level could also help unlock potential funding to support community-based organization with outreach in helping to foster understanding and facilitation of shared housing efforts among community members. 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 through Area Agencies on Aging.<sup>240</sup> Other opportunities exist to create intergenerational partnerships with educational

---

<sup>236</sup> Jim Parrott & Mark Zandi, *Overcoming the Nation's Daunting Housing Supply Shortage*, MOODY ANALYTICS 2 (March 2021), <https://www.moodyanalytics.com/-/media/article/2021/Overcoming-the-Nations-Housing-Supply-Shortage.pdf>.

<sup>237</sup> See Matthew Marlay, *A Dream Deferred: Residential Attainment Among Minority and Immigrant Groups in the United States* 55-56 (2008) (unpublished Ph.D. dissertation, The Pennsylvania State University), <https://etda.libraries.psu.edu/catalog/8872>, [https://perma.cc/36AW-W4P4]. See also Corrienne Scally, *The Nuances of NIMBY: Context and Perceptions of Affordable Rental Housing Development*, 45 URB. AFF. REV. 718, 721 (2012).

<sup>238</sup> 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), [https://www.washingtonpost.com/realestate/the-increasing-popularity-in-multigenerational-homes/2020/11/11/867d92ec-1f8e-11eb-90dd-abd0f7086a91\\_story.html](https://www.washingtonpost.com/realestate/the-increasing-popularity-in-multigenerational-homes/2020/11/11/867d92ec-1f8e-11eb-90dd-abd0f7086a91_story.html).

<sup>239</sup> See THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA, *supra* note 84 at 195.

<sup>240</sup> See *SHARE - Shared Housing and Resource Exchange*, *supra* note 66.

institutions to house college students with older adults.<sup>241</sup> Finally, shared housing also re-raises some important questions like “who does land in the community belong to” and “do local land use laws create a collective property right?”<sup>242</sup> 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. The slow growth of missing middle housing stock<sup>243</sup> represents an opportunity for shared housing to fill a gap. There are multiple constituencies including older persons, marginalized populations, survivors of domestic violence or 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 that have a shared interest in the creation and maintenance of shared housing options. 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. Shared Equity Homeownership [funding] has been largely overlooked.”<sup>244</sup> How can government be used as a tool to empower social exchange and improve communities’ ability to create multiple generation households as well as age in place? Funding for conversions, matching services, case and conflict

---

<sup>241</sup> See *generally Home*, GENERATIONS UNITED, <https://generations-united.com/> (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), <https://www.insider.com/intergenerational-living-senior-citizens-college-students-2020-1> (citing UC Berkeley, Drake University, Quinnipiac University and Winona State University as higher education institutions that have intergenerational living programs).

<sup>242</sup> See THE HOUSING BIAS: RETHINKING LAND USE LAWS FOR A DIVERSE NEW AMERICA, *supra* note 84 at 193.

<sup>243</sup> See U.S. DEP’T OF HOUS. AND URBAN DEV. PD&R INSIGHTS, PRO-HOUS. LAND USE AND ZONING REFORMS 2 (April 2023), <https://www.huduser.gov/portal/sites/default/files/pdf/policy-and-practice-publication-2023-april.pdf> (“In 2022, there were only 16,000 units started in buildings with 2-4 units across the United States.”).

<sup>244</sup> *Advocating for Community Land Trusts*, *supra* note 228.

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 and with more resources could develop into a viable option to meet many rural communities' needs.