

Maryland's Affordable Housing Land Trust Act

James J. Kelly, Jr.

On May 20, 2010, Maryland's governor, Martin O'Malley, signed the Affordable Housing Land Trust Act (AHLT Act) into law.¹ Its enactment marked the culmination of six years of advocacy by the University of Baltimore Community Development Clinic and by the Maryland Asset Building and Community Development Network. The AHLT Act authorizes a new method of creating and sustaining permanently affordable homeownership.² By using the affordable housing land trust agreements outlined in the legislation, Maryland nonprofits and governmental agencies may now enter into enforceable long-term agreements with publicly subsidized low- and moderate-income homebuyers to ensure that their homes remain affordable for other income-qualified homebuyers in the future.³ With the development of this essential tool for the creation of permanently affordable homes, Maryland has addressed key obstacles to preserving the affordable housing gains it has made through its pioneering efforts in community-based nonprofit housing development and inclusionary zoning.

This article will explore the legal obstacles that advocates of permanently affordable homeownership in Maryland faced prior to this year's statutory amendments, the dialogue that produced the final bill, and the way forward for permanently affordable housing in Maryland and elsewhere. Part I will give background about efforts to create permanently affordable homes and the difficulties presented by several legal doctrines common to many states and one unique to Maryland. Focusing on the legislation itself, Part II will describe the advocacy effort and stakeholder dialogue as well as the resulting bill that addressed a variety of concerns raised by the indefinite dedication of land to affordable homeownership. Part III will discuss how existing models of resale restrictions used by community land trust and inclusionary zoning programs can be adapted to meet the affordable housing land trust approach outlined in the statute. The article concludes

1. Affordable Housing Land Trust Act, 2010 Md. Laws chs. 609, 610 (codified at MD. CODE ANN., EST. & TRUSTS § 11-102(b)(13), MD. CODE ANN., REAL PROP. §§ 3-102(a)(2)(vi); 6-101(a); 8-110(a)(4); 8-111.2(a)(4); 14-501 thru 14-511 (2010)).

2. *Id.* (codified at MD. CODE ANN., REAL PROP. § 14-504 (2010)).

3. *Id.*

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with a discussion about the value of possible changes in the law of other states to support stewardship of housing affordability.

I. Affordable Housing in Maryland

Out of both necessity and a progressive commitment to vibrant, inclusive communities, Maryland has been a leader in the provision of affordable homes. Maryland has the highest per capita income of any state in the nation and two of the top ten wealthiest counties in the United States.⁴ Geographically, however, the state is still largely rural with significant pockets of poverty in its eastern and western regions. Moreover, its nonrural areas are dominated by the suburbs surrounding Washington, D.C., and Baltimore. The housing disparities between Maryland suburban residents and their inner-city neighbors have made Maryland a focal point for national advocacy campaigns for regional equity.⁵

The development of Columbia, Maryland, exemplifies both the progressive vision and significant challenges of sustaining economically diverse communities of choice. In the late 1960s, James Rouse, a successful developer of shopping malls and later festival marketplaces, set out to build an entire city that was integrated not only as to land use but also as to the race and socioeconomic status of its residents.⁶ Columbia became a model for comprehensive planned communities and a hopeful sign for a multicultural America at a time of heightened racial tension. But Columbia's growing appeal to people working in either Washington or Baltimore made the dream of class diversity very difficult to sustain.⁷ Despite the inclusion of many units of multifamily housing along with the more traditional suburban single-family homes, Columbia's population is skewed heavily toward the upper-middle class.⁸ As a result, the once bucolic Howard County is now one of the wealthiest counties in the United States.⁹

4. See U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY 2009, available at <http://factfinder.census.gov> (median family income estimated at \$69,272 for state); Matt Woolsey, *America's Richest Counties*, FORBES.COM (Jan. 22, 2008), available at www.forbes.com/2008/01/22/counties-rich-income-forbeslife-cx_mw_0122realestate.html.

5. See e.g., *Thompson v. HUD*, 404 F.3d 821 (4th Cir. 2005) (affirming modification of consent decree regulating the siting of public housing subsidies in areas in the Baltimore metropolitan region that do not already have high concentrations of minority residents or residents receiving housing assistance).

6. JOSHUA OLSEN, *BETTER PLACES, BETTER LIVES: A BIOGRAPHY OF JAMES ROUSE 177-95* (Urban Land Inst. 2003).

7. *Id.*

8. *Id.*

9. HOWARD COUNTY, MARYLAND, COMPREHENSIVE ANNUAL FINANCIAL REPORT FYE JUNE 30, 2006, at iv, available at www.howardcountymd.gov/DOF/DOFDocs/CAFR6.pdf ("The County is . . . the third wealthiest in the nation.").

Columbia offers a dramatic example of the challenges of sustaining economic diversity in a desirable place to live. Maryland's experiences with developing and sustaining affordable homes in suburban, urban, and rural areas have all pointed out the need for addressing long-term trends in land prices. Although the very first inclusionary zoning ordinance was enacted in Fairfax County, Virginia, in 1971,¹⁰ Maryland's Montgomery County inclusionary zoning program, which started in 1974, has been widely recognized as an early model for similar attempts to integrate affordable housing into new residential developments.¹¹ Montgomery County's inclusionary zoning ordinance originally provided for a five-year period during which below-market rate units in an inclusionary zoning development must remain affordable even if resold.¹² In 1981, the rapid loss of subsidized homes to the market led policymakers to double the control period to ten years.¹³ Just eight years later, it was doubled again to twenty years. It was clear, fifteen years after this amendment, that even this twenty-year protection for affordability was insufficient.¹⁴ The ordinance was amended again, this time to guarantee that all subsidized homeownership units would stay affordable for at least thirty years after they were first sold.¹⁵ Yet even as housing advocates achieved durability of subsidies in the inclusionary zoning context, they recognized a need for protecting those affordable homes developed outside the inclusionary zoning system.

Maryland housing advocates have also struggled with abrupt escalations in housing prices in its cities and its rural areas, where affordable units have been developed using government grants and low-interest loans. The residents of McElderry Park, a largely African American neighborhood just east of John Hopkins Hospital in Baltimore, want their struggling com-

10. Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 S. CAL L. REV. 1167, 1169 (1981); published in slightly different form in *RESOLVING THE HOUSING CRISIS* 135–87 (M. Johnson ed., 1982). Fairfax's ordinance was struck down as exceeding its statutorily created zoning authority and as an unconstitutional taking. *Bd. of County Supervisors of Fairfax County v. DeGroff Enters.*, 198 S.E.2d 600 (Va. 1974). It would be almost twenty years before Fairfax County would enact another inclusionary zoning ordinance. KAREN DESTOREL BROWN, *EXPANDING AFFORDABLE HOUSING THROUGH INCLUSIONARY ZONING: LESSONS FROM THE WASHINGTON METROPOLITAN AREA 31*, available at http://www.brookings.edu/reports/2001/10metropolitanpolicy_brown.aspx (last visited Oct. 3, 2010).

11. BROWN, *supra* note at 10. MONTGOMERY COUNTY DEP'T OF HOUS. & CMTY. AFFAIRS, *HISTORY OF THE MPDU PROGRAM IN MONTGOMERY COUNTY*, available at www.montgomerycountymd.gov/dhctmpl.asp?url=/content/dhca/housing/housing_P/mpdu/history.asp (last visited Oct. 5, 2010) [hereinafter MONTGOMERY COUNTY].

12. BROWN, *supra* note 10, at 30. MONTGOMERY COUNTY, *supra* note 11.

13. BROWN, *supra* note 10, at 30. MONTGOMERY COUNTY, *supra* note 11.

14. BROWN, *supra* note 10, at 30. MONTGOMERY COUNTY, *supra* note 11.

15. MONTGOMERY COUNTY, *supra* note 11.

munity to become more attractive, but without displacing long-time residents or destroying its essential character. Neighborhoods to the south of the hospital have been rapidly gentrifying, even as a large-scale redevelopment project to the north has been condemning houses to make way for a mixed-use biotechnology plan.¹⁶ The long-time homeowners have sought out a different way to move forward, one in which community improvement would benefit current residents in a process controlled by community members. They have partnered with Charm City Land Trusts, Inc., a community land trust, to steward community open spaces and permanently affordable homes in their neighborhood.

In Garrett County, on Maryland's western edge, the recreational opportunities offered by Deep Creek Lake have transformed this sleepy rural area into a beehive of resort and vacation home development. In the midst of rapidly appreciating land values, the county government has made plans to set aside prime real estate for the development of homes affordable to the workforce that sustains the local agricultural and service economy.¹⁷ Like their counterparts in suburban Montgomery County and the urban neighborhood activists of McElderry Park, officials and residents of Garrett County want their investment in affordable homeownership to last. They do not want to invest in publicly owned rental housing, but they also do not want homes built for low- and moderate-income families to become unaffordable once resold on the open market.

It is not surprising that all three of these groups have looked to the community land trust movement for ideas on how to create permanently affordable homes. Community land trusts offer a mechanism by which developers of subsidized homes can contractually obligate their low- and moderate-income homebuyers to resell their homes at below-market prices to income-qualified households.¹⁸ Homeowners, in exchange for receiving the significant subsidy they needed when they bought the property, are required to forego some of the financial return on the appreciating value of their properties, without which they could not afford to purchase their new home. Community land trusts strike a balance between the ongoing affordability of the home and the return on the current homeowner's

16. James J. Kelly, Jr., *Taming Eminent Domain*, SHELTERFORCE, Mar. 2008, available at www.shelterforce.org/article/214/taming_ eminent_domain/.

17. *Hearing on H.D. 1006 Before the House Comm. on Environmental Matters*, 2009 Leg., 423rd Sess. (Md. 2009) (testimony of Duane Yoder, President of the Garrett County Community Action Committee)

18. Although this is handled as a direct seller-to-buyer transaction in some CLTs, the more common process is for the CLT to repurchase the price-restricted home from the seller and to resell immediately to another income-qualified buyer. JOHN EMMES DAVIS, *SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUSING* 18–19 (2006), available at www.burlingtonassociates.com/resources/archives/SharedEquityHome.pdf.

investment.¹⁹ The resale formula by which the price of the home is calculated frequently uses either some objective growth index or a percentage of the home's market value appreciation to calculate a fair return for the departing homeowner.²⁰ For this reason, John Emmeus Davis, a veteran advocate and expert on affordable homeownership, has held up community land trusts as a prime example of what he calls "shared equity homeownership."²¹

Affordable homeownership programs frequently institute subsidy protections to ensure that homeowners do not liquidate their stakes in below-market homes and pocket the subsidy money.²² Down payment assistance funds are often disbursed as deferred loans that are repaid at resale or forgiven after the homeowner has lived in the property for a number of years.²³ If repaid to the subsidy provider, a policy known as subsidy recapture, these funds can be used again to help another homebuyer. Subsidy recapture recycles money with the hope that land and homes do not become prohibitively expensive over time.²⁴ Subsidy retention, by contrast, keeps the property itself affordable, providing for sustained economic diversity even in areas facing a chronic lack of affordable housing.

As programs that keep homeownership subsidies in place over an indefinitely long period, inclusionary housing resale monitoring programs, community land trusts, and other shared equity homeownership initiatives depend upon innovative property relationships that are critical to sustaining economically diverse communities of choice. Protecting the long-term affordability of a particular owner-occupied property requires special legal tools. Traditional fee simple owners have the unfettered ability to sell their property to whomever they choose at whatever price can be agreed upon. Stewards of long-term affordability want their subsidized homeowners to enjoy all the privileges of homeownership, except the right of unlimited return through resale of the property on the open market. Mortgage restrictions work well to recapture subsidies but do not keep them in place, lowering the price for the next income-qualified buyer. Proponents of subsidy retention have sought to make the public's investment a permanent part of the pricing of subsidized homes. They have done so by contractually imposing restrictions on the occupancy, use, improvement, financing, and pricing of the property. Generally, the owners make a promise to pay the subsidy forward in a deed covenant or in a ground lease.²⁵

19. *Id.*

20. *Id.* at 64; INST. FOR CMTY. ECON., COMMUNITY LAND TRUST LEGAL MANUAL 8-12 thru 8-18 (2d ed. 2002).

21. DAVIS, *supra* note 18, at 64.

22. *Id.* at 82-83.

23. *Id.*

24. *Id.*

25. For a comparative discussion of these two approaches, see James J. Kelly, Jr., *Homes Affordable for Good: Covenants and Ground Leases as Long-Term Resale-Restriction Devices*, 29 ST. LOUIS U. PUB. L. REV. 9 (2009).

Any long-lasting restriction on a real property owner's ability to transfer land must contend with two well-established property doctrines. Some resale restrictions create an option to purchase that is subject to the rule against perpetuities.²⁶ The rule against perpetuities invalidates contingent future interests that do not vest by the rule's deadline.²⁷ Even if resale restrictions do not trigger this limited, but strict, prohibition, they must contend with a more nebulous common-law review as to the reasonability of restraints on alienation generally.²⁸ Whether implemented through deed covenants or through ground leases, resale restrictions can be impacted by either or both of these doctrines. Because ground leases establish a stronger relationship between the subsidy steward and the land, resale restrictions contained in ground leases generally receive more favorable treatment under both the rule against perpetuities and the doctrine against unreasonable restraints on alienation.²⁹ Community land trusts enter into ground leases with subsidized homeowners.³⁰ Where state law allows it, the ownership of the land is separated from ownership of the house itself. The homeowner has full ownership of the building but only leases the land on which it sits.³¹ The lease imposes two critical subsidy-retention obligations on the homeowner: primary residency and restricted resale. The homeowners must reside in the property unless the land trust gives permission for temporary subletting or some other use.³² When the homeowners do decide to leave the property, they must notify the land trust, which will have a preemptive option to purchase the house back at a price determined by the resale formula—or will require the homeowner to sell directly to another income-qualified buyer at the formula-determined price, with the transaction overseen and approved by the CLT.³³ The Model Community Land Trust Ground Lease requires the community land trust to make its purchase decision within forty-five days of receiving notice from the homeowners of their intent to sell the home

26. *Id.* at 25–26.

27. Jesse Dukeminier, *A Modern Guide to Perpetuities*, 74 CAL. L. REV. 1867, 1868 (1986) (“We start with Gray’s classic statement of the Rule: ‘No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.’”) (quoting J. GRAY, *THE RULE AGAINST PERPETUITIES* § 201, at 19 (4th ed. 1942)).

28. See generally 3 JOHN A. BORRON, JR., SIMES & SMITH: *THE LAW OF FUTURE INTERESTS* §§ 1111–72 (3d ed. 2004). In general, the validity of restraints on alienation is determined by reference to four factors: (1) the use of the restraint to protect an interest in land, (2) the duration of the restraint, (3) the public policy’s support for the underlying purpose of the alienability, and (4) the probability that the restraint will prevent likely transfers. RESTATEMENT OF THE LAW OF PROPERTY § 406 (1944).

29. Kelly, *supra* note 25, at 25–26.

30. INST. FOR CMTY. ECON., *supra* note 20, at 2–10.

31. *Id.*

32. *Id.* at 12–13.

33. *Id.*

and move out.³⁴ Once the land trust has exercised its option, it then must close on the sale within sixty days.³⁵ Through these and other provisions, the ground lease protects the homeowners' reasonable expectations even as it secures the ongoing affordability of the subsidized home.

In Maryland, advocates of community land trusts discovered that ground leases could not be used effectively to restrict the resale prices of subsidized single-family homes. In a sense, Maryland had already "been there, done that" with regard to ground leases on residential property. Since its earliest days as a colony, Maryland had witnessed landowners leasing rather than deeding their land to long-term residents.³⁶ These leases had covenants of perpetual renewal and were increasingly treated by the courts like total transfers that merely reserved small annuity payments.³⁷ In 1884, the Maryland legislature sought to make the arrangements more like mortgage financing.³⁸ That statute allowed owners of a residential property that was subject to a ground lease to buy their way out of the ground lease by paying 16 $\frac{2}{3}$ years of ground rent as a redemption payment.³⁹ By making all new residential ground leases redeemable, this nineteenth-century reform effectively eliminated the ground lease as a viable means of controlling resales of subsidized single-family homes nearly a century before the community land trust model began to spread across the country. Moreover, Maryland, like many other states, had statutes and laws that limited the enforceability of deed restrictions longer than twenty or thirty years.⁴⁰ Advocates committed to stable stewardship of affordable homes in Maryland needed to confront the existing law by approaching their legislators.

II. Affordable Housing Land Trust Act

Although the legislation eventually adopted would comprehensively address stewardship of affordable homeownership, the AHLT Act began its journey to enactment as a bill entirely focused on the particular problem that ground lease resale restriction faced from the 1884 ground rent redemption statute. Charm City Land Trust, Inc. retained the student attorneys of

34. *Id.*

35. *Id.*

36. Frank A. Kaufman, *The Maryland Ground Rent—Mysterious but Beneficial*, 5 MD. L. REV. 1, 7 (1940).

37. See *Jones v. Magruder*, 42 F. Supp. 193 (1941) ("The chief characteristics of the Maryland ground rent leases are (1) the owner of the land in fee leases it to the named lessee for the period of ninety-nine years, (2) with covenant for renewal from time to time forever, upon payment of a small renewal fine (3) upon the condition, however, of the payment of a certain sum of money (usually payable semi-annually), and (4) upon the further condition that if the payment of the rent is in default for a stipulated time the lessor may reenter and avoid the lease.").

38. MD. CODE ANN., REAL PROP. § 8-110 (2010).

39. *Id.*

40. *Id.* § 6-101 (2010).

the University of Baltimore Community Development Clinic to represent it in efforts to change the law in Maryland to allow subsidized owners of single-family homes to enter into durable, enforceable contracts restricting the resale of these homes through ground leases lasting ninety-nine years. In January 2005, legislation was introduced in both chambers of the Maryland General Assembly to provide an exemption for community land trusts from the 1884 statute that allowed ground leases to be redeemed.⁴¹

Student attorneys in the clinic took on all the advocacy tasks associated with pushing the 2005 bill through Maryland's House of Delegates and Senate. They prepared the bill language for submission to its sponsors and the legislative services staff. The bill defined a community land trust and provided that a ground lease that restricted occupancy and resale would be exempt from redemption if a community land trust were the lessor.⁴² The lead student attorney handled all aspects of communication about the bill educating legislators, prepared her own testimony, and coordinated it with the testimony of other witnesses. The student attorneys and I, as their supervisor, also dealt with the opposition that unexpectedly arose just days before the bill was to have its first committee hearing.

An earlier version of the bill had been introduced for discussion in the House of Delegates during the 2004 session but had faced no opposition. In February 2005, the Greater Baltimore Board of Realtors, joined by the Maryland Association of Realtors and the Maryland Land Title Association, contacted the clinic to express concerns about any exemption to the ground rent redemption statute. All three organizations were quick to affirm their support for more affordable housing in Maryland, but their realtor and title agent members had had many negative experiences involving ground rents. Too often, house closings were delayed or derailed by ground rent owners who could not be located or who demanded outrageous legal fees on very small rent arrearages. These trade associations were very wary of any attempt to make ground leases of any kind irredeemable.

By the end of the ninety-day session, the opponents had articulated a series of concerns that would have to be addressed before they would consider withdrawing their opposition. They wanted a guarantee that homeowners subject to a resale restriction would not be put in limbo, unable to sell their property, if the community land trust failed. They wanted to make sure that community land trusts could not be used by scam artists to strip equity from unsuspecting homeowners. The realtors also expressed a concern that below-market sales might skew the comparable sales figures used for real estate appraisals. The realtor trade groups wanted land trust sales to subsidized homeowners to be clearly identified as not representative of prevailing market prices. Even if these problems were resolved to the complete satisfaction of the bill's opponents, however, future versions

41. H.D. 853, 2005 Leg., 418th Sess.; S. 267, 2004 Leg., 418th Sess. (Md. 2004).

42. *Id.*

of the bill faced an uncertain future without an engaged coalition pressing for its passage.

Proponents of affordable housing development needed to rally around the creation of resale-restricted, owner-occupied housing on leased land to confront the little-known technicality that prevented its development. Without a united coalition of community development corporations and housing agencies, legislators would not be likely to take sufficient interest in the bill to make changes to Maryland's real property law. Unfortunately, that same spring of 2005, the Maryland Center for Community Development, the organization best suited to organize and lead an alliance of nonprofit housing developers and local governmental agencies, ceased operations and dissolved amid severe financial difficulties.⁴³ The bill was not introduced during the 2006 General Assembly session.

To further complicate matters, the general distrust of ground rents became a fully fledged movement to abolish them altogether. In December 2006, the *Baltimore Sun* ran a series of articles about people losing their homes for failure to pay small ground rent arrearages.⁴⁴ The stories illustrated how the ground rent owners' forfeiture remedy, which requires the payment of legal fees to prevent eviction, could result in harsh and unjust losses.⁴⁵ With the start of the 2007 session, the new O'Malley administration joined forces with the leadership in both houses to produce a set of reforms to eliminate the impact of ground rents permanently.⁴⁶ One pair of bills made it easier for property owners to free their properties from ground rents and to eliminate those ground rents that were not registered with the state.⁴⁷ Another banned the creation of any new ground leases on single-family homes.⁴⁸ The most significant reform changed the ground rent owners' legal remedy for nonpayment from summary ejection to

43. Lynn Anderson, *Fund Raising Problems Force Closings of Two Charities*, *BALT. SUN*, June 22, 2005, at 2B.

44. Fred Schulte & June Arney, *On Shaky Ground: An Archaic Law Is Being Used to Turn Baltimoreans out of their Homes*, *BALT. SUN*, Dec. 10, 2006, at 1A; Fred Schulte & June Arney, *The New Lords of the Land: A Small Number of Investors Who Own Many Baltimore Ground Rents Often Sue Delinquent Payers, Obtaining Their Houses or Substantial Fees*, *BALT. SUN*, Dec. 11, 2006, at 1A; Fred Schulte & June Arney, *Demands for Reform: Even as Critics Call for Loosening Ground Rent's Grip on Baltimore, New Ones Are Being Created*, *BALT. SUN*, Dec. 12, 2006, at 1A.

45. Schulte & Arney, *On Shaky Ground*, *supra* note 44; Schulte & Arney, *New Lords of the Land*, *supra* note 44.

46. June Arney & Fred Schulte, *Ground Rent Reform Plan Set Measures to be Unveiled Today Include Expanded Options for Homeowners to Buy Out the Leases*, *BALT. SUN*, Feb. 5, 2007, at 1A; 2007 Md. Laws chs.1, 286, 287, 290, 291 (codified at MD. CODE ANN., REAL PROP. §§ 8-110, 8-110.1, 8-111.2, 8-402.2, 8-402.3, 8-701, *et seq.* (2010)).

47. 2007 Md. Laws chs. 290, 291 (codified at MD. CODE ANN., REAL PROP. §§ 8-110, 8-701, *et seq.* (2010)).

48. 2007 Md. Laws ch.1 (codified at MD. CODE ANN., REAL PROP. § 8-111.2 (2010)).

lien foreclosure.⁴⁹ All the bills passed by large majorities and were quickly signed into law by the new governor.⁵⁰

At first blush, it appeared that the law prohibiting ground leases for single-family homes closed the door on any effort to use the ground lease as a vehicle for an affordability restriction. But these simultaneous reforms took a targeted approach to the problem of ground rents. The 1884 statute that provided for redemption applied to “any reversionary interest reserved in a lease for longer than 15 years.”⁵¹ It covered any kind of long-term leasing arrangement that involved a single-family home.⁵² The laws enacted in 2007 defined *ground lease* more narrowly. Under the new reforms, a ground lease was confined to “residential lease . . . for a term of years renewable forever and subject to the payment of a periodic ground rent.”⁵³ Even without modifications, the community land trust model ground lease did not appear to be covered by the new ban in Maryland. Most CLT leases, including the model ground lease, had a ninety-nine-year term but did not provide for perpetual renewal.⁵⁴ Moreover, it appeared that the ground lease fee called for in the model lease may not be a periodic rent as set out in the 2007 definition.⁵⁵ Technically, the 1884 statute remained the only obstacle to the use of ground leases to sustain permanent affordability. The political reality, however, clearly required that affordable homeownership protection be completely disassociated from ground rents.

Late in 2007, I contacted Delegate Virginia Clagett, who had sponsored the bill since 2004. We agreed that bringing the same proposal to the House and Senate committees for the 2008 session would be premature, given the lack of a resolution with bill opponents and the lingering general antipathy toward ground rents. Despite the easy passage of all the full package of reforms the prior year, the ground rent controversy persisted due to a lawsuit challenging the change in remedy for existing ground leases as an unconstitutional uncompensated taking.⁵⁶

In 2008, however, community development activists from across the state formed the Maryland Asset Building and Community Development Net-

49. 2007 Md. Laws chs. 286 (codified at MD. CODE ANN., REAL PROP. §§ 8-402.2, 8-402.3 (2010)).

50. 2007 Md. Laws chs. 1, 286, 287, 290, 291 (codified at MD. CODE ANN., REAL PROP. §§ 8-110, 8-110.1, 8-111.2, 8-402.2, 8-402.3, 8-701, et seq. (2010)).

51. MD. CODE ANN., REAL PROP. § 8-110 (2010).

52. The statutory provision explicitly exempts commercial property, mobile home sites, and leases executed prior to its enactment. MD. CODE ANN., REAL PROP. § 8-110 (2010).

53. MD. CODE ANN., REAL PROP. §§ 8-110.1, 8-111.2 (2010).

54. INST. FOR CMTY. ECON., *supra* note 20.

55. *But see infra* notes 100-04 and accompanying text.

56. That lawsuit was subsequently withdrawn, but a subsequent class action inverse condemnation suit was filed and was still pending at time of publication. *Goldberg & PFGR, LLC v. State of Md.*, No. 02-C-07-126810 RP (Md. 2010).

work (Maryland ABCD). The new group immediately went about setting up opportunities for nonprofits to come together to build their capacities and to advocate for their shared policy priorities. I joined the organization's policy committee. By the fall of 2008, Maryland ABCD had set as its primary legislative goal the enactment of a new law to facilitate permanently affordable homeownership in Maryland. A few months later, we had a new bill, which was sponsored by Delegate Clagett in the House and Senator Jamin Raskin, a law professor at American University's Washington College of Law, and a renewed optimism that permanently affordable homes would soon be a reality in Maryland.⁵⁷

The 2009 session bill took the same basic approach as the 2005 bill had four years earlier. It exempted from statutory redemption those ground leases used by community land trusts to enforce primary residence and resale restrictions.⁵⁸ In an abundance of caution, it also provided for exemptions to many of the 2007 session reforms designed to restrict and regulate ground rents.⁵⁹ The bill took pains to clarify that payments required of homeowners by community land trusts for taxes and other charges did not constitute a periodic ground rent.⁶⁰ The new bill also expanded the definition of community land trust to include governmental agencies as well as nonprofits.⁶¹ This change reflected the fact that the Maryland ABCD coalition included inclusionary housing agencies from Montgomery and Frederick Counties interested in taking advantage of creating resale restrictions that went beyond the thirty years provided for in the inclusionary zoning statute.

The bill still faced two significant problems. First, it failed to address explicitly some of the concerns the real estate industry had raised about title obstruction in the event of a failed land trust and potential abuses of the model by sham land trusts. Second, it was still being framed as an exemption to important and popular reforms limiting residential ground leases. Delegate Doyle Niemann, a lawyer and leading member of the House Environmental Matters Committee, took responsibility for recasting the bill in a manner that would address these issues. With the ninety-day legislative session drawing to a close, Delegate Niemann proposed that the bill be referred for summer study in 2009. A few months later, he convened a gathering of all the stakeholders at the headquarters of the Maryland Department of Housing and Community Development to review the issues and reach a consensus on how they should be addressed by the General Assembly in 2010. The discussion quickly produced an outline of key points that Niemann used to draft a new bill.

57. H.D. 869, 2010 Leg., 424th Sess.; S. 780, 2010 Leg., 424th Sess. (Md. 2010).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

In 2010, the proposed AHLT Act offered a comprehensive framework for ensuring long-term affordability in a manner that addressed the full range of stakeholder concerns. The new law provided for the enforceability of promises, especially resale restrictions, made by the homeowner. It also provided key protections for those homeowners.⁶² Finally, it addressed the need to limit the property tax liability of these homes, which were purchased and resold at prices well below market value.⁶³ It did all these by defining a new kind of legal instrument called an affordable housing land trust agreement.⁶⁴

Unlike its legislative predecessors, the AHLT Act did not merely carve out an exemption for ground leases that protected the affordability of subsidized homes. Instead, it created an umbrella concept, the affordable housing land trust agreement, to comprise a variety of legal instruments that would be used to facilitate affordability stewardship.⁶⁵ To invoke the benefits of the law, an affordable housing land trust, which any housing agency or nonprofit could be, could enter into a legally enforceable arrangement with a low- or moderate-income homeowner to repurchase the home whenever the homeowner decided to move out.⁶⁶ The arrangement could be a ground lease with the preemptive option to purchase covering the improvements.⁶⁷ The bill would also allow affordable housing land trusts to sell both the house and the land to the homeowners, both being subject to resale control.⁶⁸ Under this second approach, the AHLT agreement would not be a lease at all, but a set of covenants restricting the ability of the new homeowners to rent or sell the property.⁶⁹ Having struggled for so long to carve out an exception for affordable housing ground leases, community development advocates were on the threshold of legitimizing both the ground lease and covenant mechanisms in Maryland. This broad approach to resale restrictions allowed for the housing affordability steward to decide whether a ground lease or a covenant approach better suited its policy goals.

The Act also provided a broader assurance of the enforceability of resale restriction devices. First, the Act explicitly stated that the agreement could create a preemptive option for the land trust to purchase a protected property.⁷⁰ Moreover, the agreement could last up to ninety-nine years and provide for some form of renewal.⁷¹ Such a statutory authorization of the

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

resale restriction would provide a crucial endorsement of the goals and means of affordable housing land trust agreements. This legislative grant of legitimacy would make it very difficult for anyone to attack the validity of the agreements as contrary to public policy or as invalid restraints on alienation.⁷² The Act more specifically exempted AHLT agreements from the 1884 ground rent redemption statute, the statutory formulation of the rule against perpetuities, and another code provision that limited the ability of deed restrictions to affect ownership of a property more than thirty years after their creation.⁷³ All of these provisions secured the primary goal of the community development advocates that originated the bill: a solidly enforceable method of restricting resales over an indefinitely long period of time.⁷⁴

As with the permanent affordability bills that had gone before it, the AHLT Act took great pains to distinguish between the resale restriction agreements it authorized and the ground rents that had been so controversial during the last few years.⁷⁵ The Act provided that an affordable housing land trust agreement was not a ground lease and that the recent statutory reforms that applied to ground leases did not apply to it.⁷⁶ All of these sections from the 2007 session reforms had defined or limited ground leases to those leases that had ninety-nine-year terms renewable in perpetuity and subjected the property owner's right of possession to payment of a periodic ground rent.⁷⁷

Because the bill was adding a new subtitle to Maryland's Real Property Code, it had the statutory structure to accommodate the wide variety of protections that the bill's original opponents had sought. As with the previous bills, for-profit organizations could not qualify as affordable housing land trusts.⁷⁸ This bill, however, took the further step of providing for the nullification of a nonprofit land trust's right of repurchase should it lose its IRS recognition of tax-exempt status.⁷⁹ This extra step gave those concerned about real estate scams an even stronger assurance that the owner of a resale-restricted home could not be defrauded. From a legislative drafting perspective, this provision would have been difficult to include in the previous bills, which consisted solely of a particular exemption from a redemption statute and the definition of an eligible entity.

72. See Kelly, *supra* note 25, at 23–25.

73. H.D. 869, 2010 Leg., 424th Sess.; S. 780, 2010 Leg., 424th Sess. (Md. 2010).

74. *Id.*

75. *Id.*

76. *Id.*

77. MD. CODE ANN., REAL PROP. §§ 8-110.1, 8-111.2 (2010).

78. H.D. 869, 2010 Leg., 424th Sess.; S. 780, 2010 Leg., 424th Sess. (Md. 2010) Because John Davis, when consulted by Delegate Niemann, had expressed a concern about including government agencies within a statutory definition of *community land trust*, the new bill used the term *affordable housing land trust* in its place.

79. *Id.*

Homeowners received even more explicit protection from the bill's requirement that any affordable housing land trust agreement be provided to a prospective homebuyer no less than fifteen days before the signing of a contract of sale.⁸⁰ If an affordable housing land trust failed to provide the owner with a copy of the proposed resale restriction agreement, the contract of sale could be rescinded by the homebuyer.⁸¹ This disclosure rule set an important minimal standard for buyer education in resale-restricted home sales. In fact, community land trusts have worked strenuously to provide the highest quality in homebuyer education. A recent study by the National CLT Network shows dramatically fewer foreclosures of community land trust homes than market-rate homes, an outcome attributable to both the preparation that prospective CLT homeowners receive prior to buying a resale-restricted home, including full disclosure of their rights and obligations under the ground lease, and the post-purchase services and supports that CLTs provide to preserve affordability, promote sound maintenance, and prevent foreclosures.⁸²

The AHLT Act did not attempt to regulate the resale formulae used by affordable housing land trusts to strike a balance between fair return to the departing homeowner and future affordability to the next homebuyer. As long as the land trust was required to be a nonprofit or governmental agency, legislators were satisfied that affordable housing land trusts would devise resale arrangements that would best serve the public interest, including the benefits associated with asset building for land trust homeowners. Advocates of permanent affordability successfully argued that Maryland's affordability needs were too varied to impose a uniform approach to resale formulae.⁸³

Finally, the Act directly confronted the core concern of homeowners being placed in a situation where they would not be able to sell their resale-restricted homes because of a defunct land trust. As the sudden disappearance of the Maryland Center for Community Development illustrated, nonprofits, even those created to last a long time, can fail unexpectedly. If a nonprofit land trust created AHLT agreements but ceased operations, homeowners would not be held hostage by a complex cloud on their title. The new bill stated that no right to repurchase a home could extend more

80. *Id.*

81. *Id.*

82. A recent study has shown that only about one-half of 1 percent of CLT home loans were in foreclosure in 2009, compared with 3.3 percent of prime loans and more than 15 percent of subprime loans. Emily Thaden & Greg Rosenberg, *Outperforming the Market: Delinquency and Foreclosure Rates in Community Land Trusts*, LAND LINES, Oct. 2010, 2, at 4.

83. *Hearing on H.D. 869 Before the House Comm. on Environmental Matters*, 2010 Leg., 424th Sess. (Md. 2010) (testimony of James J. Kelly, Jr., Asst. Prof. of Law, University of Baltimore School of Law).

than sixty days beyond the event that triggered the preemptive option.⁸⁴ The legislators later amended the provision to provide for a 120-day cap on the option exercise period, but the protective principle remained the same.⁸⁵ If homeowners notified a land trust of their intention to sell their property, the land trust would have a limited period of time to decide whether it wished to control the resale by exercising its preemptive option. The land trust's failure to exercise the option within the statutory period would result in the loss of the option forever, even if the agreement provided otherwise.⁸⁶ Land trusts, or their successors in interest, would still be able to enforce any subsidy recapture provisions designed to prevent a subsidy windfall to the homeowner.⁸⁷ The time limit on the option creates an essential self-executing mechanism for clearing title of the resale limitation in the absence of a viable land trust to manage the restriction.

In determining how resale-restricted properties were to be assessed for property taxes, the Act gave a benefit to both homeowner and land trust. The previous bills had not addressed the question of how property taxes should be assessed on a home in which the market value was higher not only than the purchase price, but also any resale price the homeowner might realize.⁸⁸ Community land trust advocates across the nation had been aware of the importance of a property tax assessment policy that recognized that the true taxable value of the home should be the restricted price, not the full market price. Habitat for Humanity homeowners in nearby Northern Virginia experienced a real crisis when rising land value forced them to pay more in property taxes than they did for their mortgage.⁸⁹ The AHLT Act provided that an assessment of property taxes on a home subject to an affordable housing land trust agreement would be based on the value of the home as impacted by the resale restrictions placed upon it.⁹⁰

III. Putting the New Law to Work in Maryland

Maryland ABCD has wasted no time in moving forward with implementing the AHLT Act. Less than a month after the governor signed the bill, Maryland ABCD worked with the Baltimore branch of the Federal Reserve Bank of Richmond to sponsor a daylong training on community land trusts and the new legislation. A wide array of nonprofit housing

84. H.D. 869, 2010 Leg., 424th Sess.; S. 780, 2010 Leg., 424th Sess. (Md. 2010).

85. *Id.*

86. *Id.*

87. *Id.*

88. H.D. 1329, 2004 Leg., 418th Sess. (Md. 2004); H.D. 853, 2005 Leg., 419th Sess.; S. 267, 2005 Leg., 419th Sess. (Md. 2005); H.D. 1006, 2009 Leg., 423rd Sess.; S. 929, 2009 Leg., 423rd Sess. (Md. 2009).

89. Annie Gowen, *Burned by the Boom in N. Va. Real Estate: Soaring Property Taxes Overwhelm Habitat for Humanity Homeowners*, WASH. POST, Feb. 14, 2005, at A1.

90. H.D. 869, 2010 Leg., 424th Sess.; S. 780, 2010 Leg., 424th Sess. (Md. 2010).

developers, governmental agencies, and funders learned not only about the work of community land trusts in other states but also about the possibilities for permanently affordable homeownership in Maryland. The widespread interest in bringing permanent affordability to Maryland points up the need to adapt existing ground lease and covenant instruments to conform to the AHLT Act.

In many ways, the documents currently used to create shared equity homeownership already anticipate the protections put forth in the AHLT Act. As noted above, the model CLT ground lease requires that the land trust exercise its preemptive option within forty-five days of receiving the homeowner's notice of intent to sell.⁹¹ The AHLT Act would allow that time period to be expanded to up to 120 days.⁹² Like the AHLT Act, the model CLT ground lease protects the homeowner from the resale restriction rights being acquired by a for-profit organization.⁹³ Where the Act simply terminates the right of repurchase should a nonprofit land trust lose its tax-exempt status or transfer its rights to a for-profit, the model CLT ground lease provides that the homeowner may purchase the land if the land is transferred to a for-profit entity.⁹⁴ Nevertheless, the commonality among the principles behind the drafting of both the AHLT Act and the model CLT ground lease still leaves several areas of divergence that need to be explored.

Four issues require particular attention in Maryland. First, affordable housing land trusts that follow the CLT approach of selling the house and leasing the land to the subsidized homeowner will need to take care that their AHLT agreements are not recharacterized as impermissible ground leases. Second, users of AHLT agreements will have to give serious thought as to what charges they can collect from homeowners to help pay for the costs associated with overseeing resales and other responsibilities that come with the long-term stewardship of resale-restricted, owner-occupied homes. Third, AHLT agreements should structure the land trust's option to repurchase the property so as to be absolutely clear as to when the 120-day period for exercising the option begins. Fourth, drafters of the AHLT agreement should seek to minimize transfer costs by allowing subsidized properties to pass directly from one qualified homeowner to another without the need of the AHLT taking title in between the transactions.

The AHLT Act protects AHLT agreements from the ground rent reform statutes in two different ways. The Act inserted an exemption for AHLT agreements into the 1884 statute that used broad language to subject residential ground leases to redemption by the leasehold owners.⁹⁵ As a result,

91. INST. FOR CMTY. ECON., *supra* note 20, at 12–13.

92. H.D. 869, 2010 Leg., 424th Sess., S. 780, 2010 Leg., 424th Sess. (Md. 2010)

93. INST. FOR CMTY. ECON., *supra* note 20, at 12–3.

94. *Id.*

95. Affordable Housing Land Trust Act, 2010 Md. Laws ch. 610 (codified at MD. CODE ANN., REAL PROP. § 8-110(a)(4) (2010)).

no affordable housing land trust need be concerned that its resale restriction agreement will be dissolved by the homeowner attempting to prepay a certain amount of rent. The Act, however, took a different approach with regard to the 2007 reforms. The AHLT act declared that AHLT agreements were not ground leases and that the new statutory provisions referencing ground leases did not apply to AHLT agreements.⁹⁶ Drafters of AHLT agreements therefore should take care to make sure that any lease agreement they prepare does not have the two characteristics of ground leases targeted by the 2007 session reforms: a ninety-nine-year term lease renewable in perpetuity and subjection of the lessee's right of possession to the payment of a periodic ground rent.

Arguably, the model CLT ground lease, as written, would not be a problematic ground lease since it is not renewable forever and it provides for a ground lease fee as opposed to a rent. Traditionally, the residential ground leases associated with ground rents have included covenants of perpetual renewal.⁹⁷ That is, the ninety-nine-year lease term would be automatically renewed unless both parties made an agreement to the contrary. The model CLT ground lease, by contrast, provides for one ninety-nine-year term and gives the homeowner lessee the right to renew the lease for one additional term of ninety-nine years.⁹⁸ Nothing precludes the homeowner and the land trust from agreeing to a third term 198 years after the start of the first, but the original ground lease is, by no means, a permanent grant of possession to the homeowner. Given that much regarding ground rents hinges on the fact that the leases in question are subject to perpetual renewal, this distinction is crucial.⁹⁹

The 2007 reforms were clearly driven not by the fact that the leases associated with ground rents were of indefinite duration but by the threat of ejectment homeowners faced if they failed to pay the modest, sometimes trivially small, amounts of money due on a semi-annual basis. Thus, the AHLT agreement drafters should be particularly careful when structuring any ongoing payments from homeowner to land trust and the remedies appropriate for nonpayment. CLTs have regularly looked to homeowners to pay not only the property taxes for the property but also the administrative costs associated with monitoring compliance with the lease in both the residency and resale phases.¹⁰⁰ The model CLT ground lease provides for a ground lease fee that is paid monthly to the land trust by the homeowner

96. Affordable Housing Land Trust Act, 2010 Md. Laws ch. 610 (codified at MD. CODE ANN., REAL PROP. § 14-502(a),(b) (2010)).

97. Kaufman, *supra* note 36, at 7.

98. INST. FOR CMTY. ECON., *supra* note 20, at 12-2, 12-3.

99. For instance, an 1886 statute provided that all leases with a covenant for perpetual renewal are deemed automatically renewed upon the exact same terms as originally agreed upon. Kaufman, *supra* note 36, at 17; 1886 Md. Laws, ch. 10 (codified at MD. CODE ANN., REAL PROP. § 8-109).

100. INST. FOR CMTY. ECON., *supra* note 20, at 9-2 thru 9-4.

lessee.¹⁰¹ It states that “lease fee” is a rent for the land that has been reduced from the market rate to an amount that is affordable to the homeowner lessee and recognizes the limitations placed on the homeowner.¹⁰² It also provides that any unpaid rent can be deducted from proceeds from the resale of the property that are otherwise due to the departing homeowner.¹⁰³ The remedy provisions of the model CLT ground lease, however, authorized the land trust to terminate the lease and evict the lessee homeowner if the ground lease fee arrearages were not substantially paid down after adequate notice.¹⁰⁴ Given the facts that the ground lease fee is presented in the lease as a ground rent, albeit a reduced one, and that the land trust is empowered to dispossess the homeowner for failure to pay it, the model CLT ground lease does appear to make the homeowner’s lease term “subject to the payment of a periodic ground rent.” A drafter may feel comfortable that the model CLT ground lease is sufficiently different from the statutorily problematic ground lease merely because it is not renewable forever. Prudence, however, would counsel that an affordable housing land trust agreement in Maryland avoid the model CLT ground lease’s approach to ground lease fees. Instead, proponents of affordable housing stewardship should look to alternatives to a periodic payment that is made upon pain of eviction. The drafters should keep the 2007 ground rent reforms in mind as they tackle generally the problem of structuring payments from the homeowner to the land trust.

As an alternative to collecting payments from the homeowners during their occupancy, a land trust could charge fees to subsidized homeowners at the beginning and end of their time in the home.¹⁰⁵ These sale closing fees could be taken in without concerns about how to enforce collection. The initial charge could be presented as a one-time rent payment or a lease issuance fee or a combination of the two. Upon resale, the departing homeowners might have the costs of appraisals, periodic inspections, and other stewardship activities deducted from their sale proceeds. On the other hand, regular ongoing payments by subsidized homeowners might pro-

101. *Id.* at 12-4, 12-5.

102. *Id.*

103. *Id.* at 12-13.

104. *Id.* at 12-15.

105. With regard to imposing fees to be collected upon resale of the property, housing affordability stewards should be aware of federal policy and state legislative efforts to invalidate covenants that require fees paid to a third party, often the original developer, upon resale. FIELD GUIDE TO PRIVATE TRANSFER FEES, available at www.realtor.org/library/library/fg350 (last visited Nov. 11, 2010); see R. Wilson Freyermuth, *Putting the Brakes on Private Transfer Fee Covenants*, 24 PROB. & PROP. 20 (July/Aug. 2010) (proposing state legislation that would ban to transfer fees to third parties but that would also exempt nonprofit recipients from the ban).

vide the land trust with a more regular income stream and also provide an opportunity for early detection of homeowner financial distress.¹⁰⁶

The land trust could collect payments during the term of the agreement without making failure to pay grounds for summary eviction. Homeowners associations frequently collect assessments pursuant to recorded covenants.¹⁰⁷ A homeowner's failure to pay the charges results in a lien that can be collected through an execution on the property.¹⁰⁸ The threat of the remedy creates strong incentives for prompt payment but does not subject the homeowner's term of possession to the payment of a periodic rent. Even if a land trust wants to take a lease approach to the affordable housing land trust agreement, the collection of regular fees from the homeowner could be still be done in a manner similar to homeowner association covenants. The AHLT Act provides for a judicial sale remedy that the land trust can look to for certain defaults by the owner.¹⁰⁹

The model CLT ground lease provides a very clear and workable process for repurchase of the property in response to a homeowner's announced decision to move and sell the home. These procedures can be used in affordable housing land trust agreements using either a lease approach, in which possession of the land reverts back to the trust upon termination of the agreement, or a covenant approach, which does not provide for any automatic reversion. The land trust's preemptive option does not depend on any end-of-term reversion. Therefore, the procedure for repurchase could be largely the same for both the lease and covenant approaches to an affordable housing land trust agreement. In the lease situation, the affordable housing land trust agreement would be repurchasing just the home, whereas the covenant approach would provide for repurchase of the entire property. One issue, however, still remains: How should the affordable housing land trust agreement anticipate a homeowner's breach of either the promise to reside in the property or the commitment to sell pursuant to the agreement's provisions?

The model CLT ground lease provides for termination of the lease and summary dispossession of the homeowner for a wide variety of homeowner defaults.¹¹⁰ As noted above, an AHLT agreement will almost certainly avoid using this remedy for failure to pay a recurring rent charge, but a Maryland AHLT may still use these standard lease remedies for any

106. A recent study of markedly low foreclosure rates among CLT homeowners revealed that collection of these fees provided an opportunity for CLTs to learn of homeowner financial distress at an early stage and take appropriate responsive action. Thaden & Rosenberg, *supra* note 82, at 6.

107. John Paul Hanna & David Van Atta, *California Common Interests Developments: Law and Practice* § 1.15 (2010 ed.)

108. *Id.* § 19.47

109. Affordable Housing Land Trust Act, 2010 Md. Laws ch. 610 (codified at MD. CODE ANN., REAL PROP. § 14-507 (2010)).

110. INST. FOR CMTY. ECON., *supra* note 20, at 12-15.

nonmonetary defaults by the homeowner if the AHLT agreement takes the lease approach. If the AHLT agreement provides for covenants that relate to a sale of both the house and the land to the subsidized homeowners, the AHLT agreement can use an approach more appropriate to deed-restricted property. Instead of terminating the agreement and having the property revert to the land trust as its owner, the agreement can provide for a right of entry or reverter that is triggered by a breach of either the residency or resale covenants.

By having to confront a ground lease redemption issue unique to Maryland, proponents of permanently affordable housing in the state were compelled to create an entirely new statutory structure for the stewardship of homeownership subsidies. Throughout the process, all the parties involved in the discussions of the proposed reform were broadly supportive of the goal of long-term housing affordability. They all recognized the value of a nonprofit housing developer or a government agency being able to enter into an agreement with subsidized homeowners in which those homeowners agree to pass on the good deal they have received. The long-term resale restrictions that made permanent affordability possible also raised concerns about clearly communicating the relationship between the subsidized homeowner and the land trust as the steward of that subsidy.

The AHLT Act not only provides a solid foundation for enforcing long-term resale-restricted promises but also deals with each of the concerns these far-reaching and complex arrangements raise. Homeowners entering into an affordable housing land trust agreement must be properly informed of the obligations they are undertaking. They must be free from any concern that they will be unable to sell their home because the affordable housing land trust that is supposed to oversee the resale has ceased to operate. The AHLT Act deals with these primary concerns and resolves how such subsidized properties will be taxed and how below-market resales will impact the assessments of neighboring properties.¹¹¹ Even if some of these concerns could have been addressed through responsible and thoughtful planning by housing subsidy providers and property tax assessment officials, the enactment of these protections provides greater certainty about how long-term resale restrictions will work in Maryland. Uncertainties in other states about the application of the rule against perpetuities, legal limits placed on alienation restraints, and the equitable taxation of resale-restricted, owner-occupied housing have motivated advocates in other

111. The AHLT Act provides that any sale of an affordable housing land trust property will be marked in assessment records as not being arm's-length transfers. This notation prevents them from being incorrectly used to determine the market value of other properties in the neighborhood. Affordable Housing Land Trust Act, 2010 Md. Laws ch. 610 (codified at MD. CODE ANN., REAL PROP. § 14-509 (2010)).

states to seek statutory reform as well.¹¹² The true value of Maryland's Affordable Housing Land Trust Act, however, may be in the increased credibility that the permanent affordable homeownership gains by limiting the possibility of resale controls clouding titles after the stewardship entity has ceased to function.

112. For a survey of various statutes and constitutional provisions that act either as barriers or supports for shared equity homeownership, see Ryan Sheriff, *Shared Equity Homeownership Policy Review*, reprinted in 19:3&4 J. AFFORDABLE HOUSING & CMTY. DEV. LAW 279 (2010).

