

A BOOMING CRISIS: HOUSING FOR AMERICA'S ELDERLY

By: Steven K. Boydston*

I. INTRODUCTION

In 2002, the U.S. Congress's Commission on Affordable Housing and Health Facility Needs for Seniors in the twenty-first century (the "Commission") sought to explore America's elderly population and their needs in 2002 and into the new century.¹ At that time, 12.4 percent of the U.S. population was sixty-five or older.² The Commission estimated by 2020, that figure will approach twenty percent, totaling fifty-three million Americans.³ In their analysis, the Commission dubbed these changing demographics a "quiet crisis" and urged Congress to prepare to meet the challenges of the twenty-first century as they relate to America's aging population.⁴

Elder-specific housing will need to be increased, but that will not be enough. Existing homes are being increasingly adapted for those with accessibility needs.⁵ A combination of private investment and public policy efforts at the local, state, and federal levels will be needed to address this issue. Tax incentives for home improvements and for paying down, or paying off, mortgages could make it more affordable for millions of Americans to stay in their existing home longer while potentially easing the demand for elder-specific housing. Those tax incentives, along with block grants and further development of U.S. Department of Housing and Urban Development (HUD) Section 202 Supportive Housing for the Elderly program could buffer the impact of this

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¹ COMM'N ON AFFORDABLE HOUS. AND HEALTH FACILITY NEEDS FOR SENIORS IN THE 21ST CENTURY, A QUIET CRISIS IS LOOMING FOR AMERICA'S SENIORS 1 (2002) [hereinafter AFFORDABLE HOUSING], http://govinfo.library.unt.edu/seniorscommission/pages/final_report/excecsum.html [https://perma.cc/T6UM-LNGA].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., HOUSING AMERICA'S OLDER ADULTS 2018 9 (2018), https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Housing_Americas_Older_Adults_2018_1.pdf [https://perma.cc/VDK6-M8PK].

coming crisis in elder housing.

In 2018, sixty-five million households in America were headed by someone fifty or over. This represents fifty-five percent of American households.⁶ Much of this trend is attributed to the “Baby Boomer” generation (born 1946-1965). While this trend in growth will slow down eventually, given increased longevity and population growth, the US is on the verge of a soaring number of households of persons in their seventies, eighties, nineties, and beyond.⁷ Many, if not most, of those senior adults will eventually need some kind of adapted housing. A crisis of this magnitude will require the joint cooperation of local, state, and federal government policy makers to alleviate the burden on elder housing and incentivize saving for retirement through mechanisms such as tax relief.

In this article, Part II will discuss how the housing shortage developed, beginning in the 1930s. Part III will discuss applicable federal laws and how they impact elder housing. With those federal laws and programs in mind, Part IV will discuss housing options for seniors. Part V moves into more recent surges in demand and offers possible solutions to alleviate the growing elder housing shortage. Part VI concludes the discussion by recapping the need for elder housing options and possible ways it can be addressed.

II. HOW THE SHORTAGE DEVELOPED

In the 1930s, in the height of the Great Depression, several federal housing programs were introduced in order to provide assistance to homeowners and low-income renters.⁸ One such program was the National Housing Act of 1934, which created the Federal Housing Administration (FHA).⁹ In creating the FHA, President Roosevelt and Congress hoped to encourage more construction and repair of private and public housing by insuring mortgage loans, banks, and other lenders.¹⁰ The programs’ benefits have varied from rent subsidies to loans and grants for purchasing or repairing homes and mortgage insurance.¹¹ However, these programs are not always elder-specific and waiting lists are often long.¹² There are several types of housing options available today for elderly Americans. Choosing which one is right for a person is dependent upon a host of variables, including health, physical aging, mental decline, economic changes, net worth, inheritance, emotional consequences, proximity to family, social life, transportation, and safety.¹³

The Commission found that housing trends had been developing for decades, which, as a result of various trends and economic factors, slowly

⁶ *Id.* at 2.

⁷ *Id.*

⁸ U.S. GOV’T ACCOUNTABILITY OFF., GAO-05-174, ELDERLY HOUSING: FEDERAL HOUSING PROGRAMS THAT OFFER ASSISTANCE FOR THE ELDERLY 1–2 (2005) [hereinafter *GAO Report*].

⁹ *FDR and Housing Legislation*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, <https://www.fdrlibrary.org/housing> [https://perma.cc/N3FA-377C].

¹⁰ *Id.*

¹¹ *GAO Report*, *supra* note 8, at 1–2.

¹² *Id.* at 2.

¹³ *Id.*

created the growing shortage in elder housing.¹⁴ A growing elder population is perhaps the most obvious shift over the past century regarding older Americans. In 1900, thirty-five million Americans were considered seniors, equaling less than five percent of the population.¹⁵ In 2002, seniors represented 12.4 percent of the population and predictions indicate that by 2030 the senior population will double to twenty percent of the population (seventy million).¹⁶

Nearly twenty percent of seniors have significant long-term care needs.¹⁷ In 1997, more than 5.8 million (eighteen percent) of non-institutionalized people age 65 and older required assistance with everyday activities.¹⁸ About 1.2 million (3.7 percent) were severely impaired, meaning they required assistance with three or more activities of daily living.¹⁹ To compound the difficulty, at the same time more housing is needed for elderly residents, America's affordable housing could lose a significant number of units. According to the Commission, 324,000 Section 8 assisted units in senior properties are currently at risk of "opting out" of the HUD program.²⁰

III. FEDERAL LAWS RELATED TO ELDER HOUSING

A. *Title VIII of the Civil Rights Act of 1968*

Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, intended to expand the housing portions of the Civil Rights Act of 1964, chiefly by prohibiting discrimination as it relates to the sale, rental, and financing of housing based on religion, race, or national origin.²¹ In 1974, gender was added to the list of protected categories, and persons with disabilities and persons with children were added in 1988.²² Before the passage of the Fair Housing Act Supreme Court decisions, such as *Shelley v. Kraemer* and *Jones v. Mayer Co.*, prohibited exclusion of minorities from certain sections in cities.²³ Despite these U.S. Supreme Court decisions, race-based housing patterns persisted well into the 1960s.²⁴

The Fair Housing Act came into being after a series of civil rights

¹⁴ AFFORDABLE HOUSING, *supra* note 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ AFFORDABLE HOUSING, *supra* note 1.

²¹ Fair Housing Act, 42 U.S.C.A. § 3604 (1968).

²² Fair Housing Act, 42 U.S.C.A. § 3604 (amended 1974) (West, Westlaw through Pub.L. 93-383);

Fair Housing Act, 42 U.S.C.A. § 3604 (amended 1988) (West, Westlaw through Pub.L. 100-430).

²³ *Fair Housing Act*, HISTORY.COM (Sept. 12, 2018), <http://www.history.com/topics/black-history/fair-housing-act> [https://perma.cc/92BZ-BJ3D]. See generally *Shelley v. Kraemer*, 334 U.S. 1 (1948) (reversing judgment in favor of racially restrictive housing covenants); *Jones v. Mayer Co.*, 392 U.S. 409 (1968) (holding that 42 U.S.C.A. § 1982 barred all racial discrimination, public or private, in the sale or rental of property).

²⁴ *Id.*

campaigns against housing discrimination in America.²⁵ The Act was first proposed in 1966, but found resistance in the U.S. Congress.²⁶ The Act again failed to pass both houses of Congress in 1967.²⁷ Finally, in 1968, just one week after the assassination of Dr. Martin Luther King, Jr., the Fair Housing Act was passed by Congress and signed by President Johnson.²⁸ Upon signing the Act, President Johnson said, “I do not exaggerate when I say that the proudest moments of my presidency have been times such as this when I have signed into law the promises of a century.”²⁹ The Fair Housing Act is widely considered the Civil Rights Era’s final great legislative accomplishment.³⁰

The Fair Housing Act prohibited discrimination not only by those who offer housing directly, such as landlords and real estate companies, but also by indirect providers of housing such as banks, municipalities, and homeowner insurance companies.³¹ However, the Act exempted housing made specifically for the elderly so that those providing housing for seniors were able to keep designated elder housing from being occupied by non-seniors.³² While housing providers could not discriminate based on race, religion, or national origin in buying or renting housing designated for the elderly, the exemption made it so that housing providers could refuse to rent or sell based on age.³³ This was designed to prevent unfair limitations on the housing choices of seniors.³⁴

The senior exemption in the Fair Housing Act came with a few “strings,” however. Housing for older persons, for purposes of the Act, was considered “housing intended for, and solely occupied by, persons 62 years of age or older”³⁵ or “housing intended for and operated by persons 55 years of age or older”³⁶ and “at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older.”³⁷ The Act also required housing for older persons to have “*significant facilities and services* specifically designed to meet the physical and social needs of older persons.”³⁸ These services included special adaptations for homes to make them more conducive to senior living.

²⁵ *Id.*

²⁶ *Fair Housing Act*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Fair-Housing-Act> [<https://perma.cc/F3W3-LSFC>].

²⁷ *See id.*

²⁸ *Id.*

²⁹ *Remarks Upon Signing the Civil Rights Act*, THE AMERICAN PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/remarks-upon-signing-the-civil-rights-act> [<https://perma.cc/R7YK-BCZ4>].

³⁰ HISTORY.COM, *supra* note 23.

³¹ *1968: Federal Fair Housing Act*, THE FAIR HOUS. CTR. OF GREATER BOS., <https://www.bostonfairhousing.org/timeline/1968-Fair-Housing-Act.html> [<https://perma.cc/YD2S-BGLM>].

³² Housing for Older Persons, 24 C.F.R. § 100.303(a) (2020).

³³ *Id.*

³⁴ Robin Dale & Paul Gordon, *Fair Housing Challenges for Senior Housing Providers*, FLICRA, http://www.flicra.com/uploadedFiles/File/Fair_Housing_Act_for_Residents.pdf [<https://perma.cc/V9AG-P5LZ>].

³⁵ Housing for Older Persons, 24 C.F.R. § 100.303(a) (2020).

³⁶ *Id.* § 100.304(a).

³⁷ *Id.* § 100.305(a).

³⁸ S. REP. NO. 104-172, at 3 (1995).

The “black letter” requirements for significant services and facilities were left unclear because the particular renovations and adaptations required were not listed.³⁹ This led to the provision becoming the subject of housing discrimination litigation throughout the country.⁴⁰ The significant services requirement particularly disadvantaged low-income seniors who found renovations to be a constant source of rent increase.⁴¹ Opposition to the provision was said to be “particularly vociferous” in mobile-home parks.⁴²

B. Evolution of the Housing for Older Persons Act

The Housing for Older Persons Act of 1995 (HOPA) was signed by President Bill Clinton on December 28, 1995.⁴³ Administered by HUD, it amended the Fair Housing Act by no longer requiring “significant facilities and services” designed for the elderly in qualified housing for those aged 55 or more.⁴⁴ According to HUD,

HOPA requires that a facility or community seeking to claim the 55 and older exemption show three factors: (1) That the housing be intended and operated for persons 55 years of age or older; (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.⁴⁵

Additionally, Section 3 of HOPA added a new provision—807(b)(5)—to the Act.⁴⁶ This new provision established a good faith defense against civil money damages for a person who reasonably relies in good faith on a written statement or application of the exemption, even if, in fact, the housing facility or community does not qualify for the exemption.⁴⁷ With this provision, an individual, such as a member of a board governing a homeowner’s association

³⁹ See *id.*; HUD’s “Significant Facilities” Rule for Seniors-Only Housing is Eliminated, NAT’L FAIR HOUS. ADVOCATE ONLINE (Dec. 1995), <http://fhco.org/index.php/learning-resources/fhco-downloads/category/1-fhco-downloads?download=77:familial> [https://perma.cc/GYN4-HFJD] [hereinafter “Significant Facilities” Rule Eliminated].

⁴⁰ S. REP. NO. 104-172, at 3.

⁴¹ “Significant Facilities” Rule Eliminated, *supra* note 39.

⁴² *Id.* (quoting the AARP’s characterization of complaints emanating from mobile-home parks)

⁴³ *Understanding Housing for Older Persons Act*, INSIDE TAMPA HOMES, <https://www.inside-tampahomes.com/understanding-HOPA> [https://perma.cc/9WCW-TSVT].

⁴⁴ *Questions and Answers Concerning the Final Rule Implementing the Housing for Older Persons Act of 1995*, U.S. DEP’T OF HOUS. AND URBAN DEV., at 1, https://www.hud.gov/sites/documents/DOC_7769.PDF [https://perma.cc/CR2E-7TRX] [hereinafter *Q&A Concerning HOPA*].

⁴⁵ Implementation of the Housing for Older Persons Act of 1995, 64 Fed. Reg. 16,324, 16,324 (Apr. 2, 1999) (to be codified at 24 C.F.R. pt. 100).

⁴⁶ Housing for Older Persons Act of 1995, Pub. L. No. 104-76, §§ 2, 3, 109 Stat. 787, 787 (1995) (current version at 42 U.S.C.A. § 3607(b)(5)).

⁴⁷ *Id.* at 787–88.

or real estate agent, is immune from suit if they rely in good faith on information that designates or implies housing HOPA compliance.⁴⁸ That information, however, must be given to them by the providers of the senior housing to qualify for immunity.⁴⁹

A good faith effort to demonstrate an intent to provide housing to persons fifty-five years of age or older would include: a) written rules, deeds, lease provisions, regulations, or other restrictions; b) the owner/management of the housing facility uses actual practices that would be used in the enforcement of HOPA rules; c) the facility advertises itself to attract prospective residents that would qualify to live in the facility and is described appropriately; d) the facility has age verification procedures and can produce them in the event of a familial status complaint.⁵⁰

HOPA was passed overwhelmingly by Congress as an attempt to return the regulations to what they believed to be the original intent of the Fair Housing Act of 1968.⁵¹ By the 1990s the judicial branch and administrative agencies had begun to chip away at the Fair Housing Act as the result of decades of litigation and administrative challenges to certain provisions, specifically the ambiguous “significant services and requirements” provision.⁵² Congress wanted to make legislation that was senior-specific in nature.⁵³ Senator Hank Brown (R-CO) said the purpose of HOPA was to “[make] the law clearer and more workable for seniors . . . to protect so they can, if they wish to, move to housing where they are protected in their safety and their privacy.”⁵⁴

C. Section 202 Housing

Title II, Section 202 of the National Industrial Recovery Act was passed June 16, 1933 as part of President Franklin Roosevelt’s New Deal.⁵⁵ The Act empowered the Public Works Administration to develop a program for the “construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects.”⁵⁶ It has evolved over the decades, but today its aim is to help expand the supply of affordable housing with supportive services for very low-income elderly persons and frail elderly persons.⁵⁷ The National Housing Act provides a definition of “frail elderly”:

⁴⁸ *Q&A Concerning HOPA*, *supra* note 44, at 13.

⁴⁹ *Id.* at 14.

⁵⁰ *Id.* at 3.

⁵¹ Implementation of the Housing for Older Persons Act of 1995, 64 Fed. Reg. at 16,324–25.

⁵² *Id.*

⁵³ Daniel B. Greenstein, *The Fair Housing Act Meet Senior Living: Condo Exemptions and the 55+ Population*, BERNICK LIFSON, P.A. BLOG (Feb. 21, 2017), <https://www.bernicklifson.com/fair-housing-act-senior-living/> [https://perma.cc/7CB3-GXN7].

⁵⁴ Implementation of the Housing for Older Persons Act, 64 Fed. Reg. at 16,325.

⁵⁵ *National Industrial Recovery Act of 1933*, NAT’L ARCHIVES CATALOG, <https://catalog.archives.gov/id/10482196> [https://perma.cc/5S6W-FX4D].

⁵⁶ National Industrial Recovery Act of 1933, Pub. L. No. 73-67, § 202(d), 48 Stat. 195, 201, *invalidated by* *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

⁵⁷ *Section 202 Supportive Housing for the Elderly Program*, U.S. DEP’T OF HOUS. AND URBAN DEV., https://www.hud.gov/program_offices/housing/mfh/progdsc/eld202 [https://perma.cc/333

The term 'frail elderly' means an elderly person who is unable to perform at least three activities of daily living adopted by the Secretary for purposes of this program. Owners may establish additional eligibility requirements (acceptable to the Secretary of HUD) based on the standards in local supportive services programs.⁵⁸

Section 202 of the National Industrial Recovery Act, according to HUD, "provides capital advances to finance the construction, rehabilitation or acquisition with or without rehabilitation of structures that will serve as supportive housing for very low-income elderly persons, including the frail elderly, and provides rent subsidies for the projects to help make them affordable."⁵⁹ These capital advances are interest free⁶⁰ and if the project serves very low-income elderly persons for at least 40 years the capital advance does not have to be paid back.⁶¹ Like the Supportive Housing for Persons with Disabilities (Section 811) program, Section 202 helps very low-income seniors live independently with access to support activities. Support for seniors in areas like transportation and day-to-day domestic needs like cooking and cleaning are covered.⁶²

In looking at legislation passed over the last century as it regards housing, efforts have been made to prevent housing discrimination toward a variety of categories of persons, including the elderly. Legislative efforts have also been made for low- and fixed-income persons, of which the elderly make up a significant portion.⁶³ As a person ages, they must consider what options are available to them given, among other things, their location, income, and abilities.⁶⁴ As lawyers, we can help seniors be familiar with housing laws as they apply to seniors and help them weigh out their options to find the best living arrangements for them as they age.

IV. HOUSING OPTIONS FOR SENIORS

A. *Aging in Place*

As a person ages and approaches retirement, one of the biggest questions that need to be answered is where they will live.⁶⁵ Should they remain in their current living arrangement, or move elsewhere? Obviously, many factors

N-4XEJ] [hereinafter *Supportive Housing*].

⁵⁸ National Housing Act § 241, 12 U.S.C.A. § 1701q(k)(2) (2014) (West, Westlaw through P.L. 116-158).

⁵⁹ *Supportive Housing*, *supra* note 57.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ NATALIE KEAN & KATIE LANG, JUSTICE IN AGING, SUPPORTING OLDER AMERICANS' BASIC NEEDS: HEALTH CARE, INCOME, HOUSING AND FOOD 2 (2018)

⁶⁴ *Id.* at 1.

⁶⁵ LAWRENCE A. FROLIK, RESIDENCE OPTIONS FOR OLDER AND DISABLED CLIENTS 37 (2008).

influence this decision. Retirement usually offers the chance to relocate, since a primary factor influencing where one lives during one's working years is its proximity to one's place of work.⁶⁶ If in a more urban area, they may want to move to a less expensive area outside the urban sprawl to cut down on costs.⁶⁷ If they live in a large home that they bought when their children were growing up, they might consider downsizing to save money for the future and to keep from having to pay the overhead on a larger home.⁶⁸

However, many recent retirees do not wish to relocate for several reasons. To many recent retirees, their homes and neighborhoods represent years, decades, or even a lifetime of memories with children and friends and neighbors as well as relationships with local businesses, restaurants, and schools.⁶⁹ They may also have longstanding affiliations and wonderful relationships in local social groups, volunteer organizations, and religious organizations.⁷⁰ "Aging in place" is when recent retirees decide to stay in their current living situation rather than relocate.⁷¹ If they are in good health, a good case can be made for aging in place. The role of an attorney in this process is to help older clients understand what their different housing options are given their health, budget, and wishes.⁷²

Moving can be a source of stress and anxiety as well as being costly and disruptive for anyone at any age. However, moving can be particularly traumatic for the elderly. Of course, some older persons may see relocating as a new adventure, but many see it as a sign of defeat and a reminder of their growing frailty. Attorneys should be able to discern when to advise a client to age in place and when it becomes necessary on a practical or medical level for them to relocate. Being able to age in place is ideal for most seniors. When individuals age in place, they can maintain their longstanding network with friends and neighbors and help look out for each other. Being able to age in place indicates one's autonomy, which combined with human interaction of old friends and neighbors, affects an elderly person's outlook on life and longevity. If the senior owns their home, it is especially desirable to age in place, because selling their current home and moving into a new residence can sometimes prove more expensive than staying put.⁷³

If an older homeowner does age in place, it is important for them to consider whether or not they will add the names of their children or other intended heir to the deed of their home. Adding an heir to the deed does not mean that the older homeowner must move out, nor does it mean the child must move in. Adding a child or heir's name to the deed of the home is a way to ensure that when an older homeowner dies, their heir(s) will have ownership of the home

⁶⁶ *Id.*

⁶⁷ *See id.* at 37–38.

⁶⁸ *Id.* at 37.

⁶⁹ *Id.* at 38.

⁷⁰ *Id.*

⁷¹ FROLIK, *supra* note 66, at 37.

⁷² *Id.*

⁷³ *Id.* at 38.

with potentially fewer disputes over inheritance of the home.⁷⁴ If inheritance is indeed the intended goal in adding a child to a homeowner-parent's deed, the deed may be titled a Joint Tenancy with Right of Survivorship (JTWROS).⁷⁵

With a JTWROS, any party on the deed can die and the property automatically becomes the property of the surviving joint owner(s).⁷⁶ For example, Dad, Son, and Daughter have a JTWROS on Dad's home. Each respective party has a one-third interest in the home. Dad dies. The home becomes the property of Son and Daughter and each party now has one-half interest in the home. Because of ambiguities in some jurisdictions where courts have questioned whether or not the parties actually intended to form a Tenancy in Common (TIC), it is useful for lawyers to add language in the JTWROS stating the joint tenancy is "as joint tenants with right of survivorship and not as tenants in common."⁷⁷ One thing to consider with a JTWROS is that the children on the deed can move into the home even without consent of the older homeowner and neither can evict the other.⁷⁸

Rather than a JTWROS, some older homeowners may prefer a TIC. A TIC differs from a JTWROS in that, among other things, it allows each party on the deed to own an undivided fractional part of the home rather than an undivided interest in the whole home.⁷⁹ Also, there are no rights of survivorship using a TIC.⁸⁰ If one of the cotenants dies, their share is assigned to a designated person in the decedent's will, or, by intestacy if there is no will.⁸¹ For instance, Dad adds Son to the deed of his home as TIC. Both parties have one-half of the total interest in the home. Dad dies, and in his will leaves his one half-interest in the home to be divided among Grandson and Granddaughter. Rather than Son owning the home outright, as he would with a JTWROS, Son still owns a one-half interest in the home, while Grandson and Granddaughter each own a quarter interest in the home.

B. Condominiums and Cooperatives

Since the 1990s there has been a rising popularity in condominiums and cooperatives for the elderly.⁸² Cooperatives are groups of apartments usually owned by older residents and are prevalent in New York City, but much less so elsewhere in the country.⁸³ Many older residents feel the upkeep of a home (e.g., maintenance, lawn care, etc.) and emotional toll (e.g., isolation, lack of security, and excessive size) are no longer worth it and decide to move into an elder

⁷⁴ *Id.* at 61.

⁷⁵ *Id.*

⁷⁶ *Id.* at 61.

⁷⁷ FROLIK, *supra* note 66, at 62.

⁷⁸ *Id.*

⁷⁹ *Id.* at 63.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 71.

⁸³ FROLIK, *supra* note 66, at 71.

condominium or cooperative community.⁸⁴ For condominium owners, it gives them an opportunity to take advantage of owning property and the psychological satisfaction of owning their dwelling.⁸⁵

Most people in America who own a home also own the land the house sits on in fee simple.⁸⁶ Owning property in fee simple is the most absolute form of ownership and is of perpetual duration.⁸⁷ Condominium owners almost invariably own their home in fee simple, but just their particular dwelling within the building.⁸⁸ The common areas of the building are jointly owned by all member owners, including the halls, stairways, elevators, basement, roof, land around the building, etc.⁸⁹ Conversely, residents in a cooperative (often called “co-ops”) do not own their unit or dwelling.⁹⁰ In this category, the building and the land are property of the co-op.⁹¹ The co-op is a non-profit corporation whose shares are owned by the occupants of the cooperative.⁹² A resident purchases stock in the co-op, signs a lease, and pays the corporation a monthly maintenance fee.⁹³ By paying into the co-op, the resident owns the right to a unit, but perhaps not one specific unit. In other words, the resident is buying into the co-op knowing that they have ownership rights to one of the units on the property.⁹⁴

C. Accessory Dwelling Units

In situations where an elderly person’s children may not live in close proximity to them, but they have a large enough house themselves, the children could consider an accessory dwelling unit for their single-family home. These are sometimes called “granny flats,” and are placed in the yard near the single-family home to allow for close proximity while maintaining privacy and independence.⁹⁵ The trouble many city-dwellers run into with accessory dwelling units is zoning prohibitions.⁹⁶ Often, when local governments do prohibit such construction through zoning laws, it is done under the argument of preserving property values, which in turn helps ensure an adequate tax base for schools, roads, public recreation, etc.⁹⁷ However, zoning prohibitions can also be used to promote racial and social homogeneity in a given area.⁹⁸ If that is not

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ BARLOW BURKE & JOSEPH SNOE, PROPERTY: EXAMPLES & EXPLANATIONS (4th ed. 2012).

⁸⁸ FROLIK, *supra* note 66, at 72.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ FROLIK, *supra* note 66, at 72.

⁹⁵ LAWRENCE A. FROLIK & ALISON BARNES, ELDER LAW: CASES AND MATERIALS 322 (6th ed. 2015).

⁹⁶ Michael H. Schill, *Regulations and Housing Development: What We Know*, 8 CITYSCAPE 5, 6 (2005), <https://www.huduser.gov/periodicals/cityscape/vol8num1/ch1.pdf> [<https://perma.cc/7N5P-DSSH>].

⁹⁷ *Id.* at 7.

⁹⁸ *Id.*

desirable or not permitted by law, the family could consider converting an excess room into an accessory apartment to allow the inhabitants to have their own space and facilities while still living under the same roof.⁹⁹

Again, unfortunately, zoning laws may conflict with accessory dwelling plans. If someone is considering such an arrangement, they should first check their local zoning laws at the appropriate office. These living arrangements could be ideal for many families as they allow family or caregivers to have close proximity to an elderly person which cuts down on travel costs.¹⁰⁰ Such an arrangement also allows the family to maintain a close relationship in the person's older years, while still having some space between them to have privacy. Unfortunately, the courts are not always supportive of accessory apartments.¹⁰¹

For example, in *Rowatti v. Gonchar*, a daughter, Mrs. Gonchar, had an accessory apartment in her single-family home for her elderly mother.¹⁰² The apartment had its own kitchen, boiler, bathroom, heating system, and entranceway.¹⁰³ These features allowed the apartment to function independently from the house and Mrs. Gonchar's mother could even cook on her own, independent of the family.¹⁰⁴ Because the Gonchar's house was zoned as a single-family dwelling, the accessory apartment was challenged in court.¹⁰⁵ The case notes the Gonchars were told at several junctures in the renovation process that they were proceeding at their own risk.¹⁰⁶ Ultimately, the Supreme Court of New Jersey ruled that the added apartment constituted a multi-family dwelling by its structural design and was in violation of the local zoning ordinance.¹⁰⁷ With that in mind, accessory apartments would perhaps be most ideal for more rural areas that either do not have zoning laws, i.e., outside the city limits, or areas that are not specifically zoned for single-family housing.

D. Continuing Care Retirement Communities

If aging in place or creating an accessory apartment is not an option or not preferred, an older person could consider a Continuing Care Retirement Community (CCRC). The concept of CCRCs goes back one hundred years, when religious organizations would establish communities for the elderly who had no family.¹⁰⁸ There, the aged residents could commune and enjoy one another's company while still having private quarters and a staff to provide care

⁹⁹ FROLIK & BARNES, *supra* note 96, at 322.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 323.

¹⁰² *Rowatti v. Gonchar*, 500 A.2d 381, 383 (N.J. 1985).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 386.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 387.

¹⁰⁷ *Id.*

¹⁰⁸ *Continuing Care Retirement Communities*, MED.JRANK.ORG (2020), <https://medicine.jrank.org/pages/368/Continuing-Care-Retirement-Communities-Definition-history.html> [<https://perma.cc/8HV4-6Q7N>].

for the remainder of their lives.¹⁰⁹ In exchange, the residents turned over all their assets to the organization.¹¹⁰ Today, many of the non-profit entities that operate CCRCs are still affiliated with religious organizations of various denominations.¹¹¹

CCRCs have become popular among seniors in the past few decades, particularly among middle- to upper-income retirees.¹¹² They can vary greatly in the structure, location, and offerings.¹¹³ Some may be high rise, some low rise. Some might be urban, some suburban or rural. Most, though, have several common areas for community social and leisure activities.¹¹⁴ Most CCRCs only take new residents who are capable of living independently, so they are a good “first step” toward elder housing.¹¹⁵ While the resident usually does not own their dwelling, they can still live independently, while having support and medical staff onsite to help as needed.¹¹⁶ Knowing there is a nurse down the hall, coupled with the sense of security that comes with being in such a place (they are usually fenced in and gated) makes CCRCs an attractive option for those seniors that can afford to live there.¹¹⁷

CCRCs no longer require residents to surrender all their assets.¹¹⁸ They do, however, charge a high fee for admission, which is often refundable. This does not include the monthly rate for occupancy.¹¹⁹ The admission fee is said to support the capital costs associated with running the CCRC and as a pre-payment for healthcare.¹²⁰ While it may seem like a high rate for admission, it is still attractive for many seniors because of what comes with it. By pre-paying for healthcare via the admission fee, the residents are guaranteed a “bed” at the assisted living or nursing home should their health decline while living at the CCRC.¹²¹

Roughly analogous to buying insurance, the resident’s admission fee is pooled together to help pay the cost of the assisted living and nursing home residents from the CCRC.¹²² Therefore, if, or when, a resident transitions to one of those facilities, the new admission fees will help cover their costs.¹²³ This pooling assuages the concerns of many residents as it limits the future high costs associated with assisted living and nursing homes, while simultaneously

¹⁰⁹ Walter J. Reinhart, *Continuing Care Retirement Communities*, 5 J. AMBULATORY CARE MKTG. 183, 184 (1994).

¹¹⁰ *Id.*

¹¹¹ *Continuing Care Retirement Communities*, *supra* note 109.

¹¹² Dan Haut, *Continuing Care Retirement Communities*, OSBOURNE PARTNERS (Oct. 2019), <http://osbornepartners.com/continuing-care-retirement-communities/> [<https://perma.cc/4Z5D-3JH5>].

¹¹³ Reinhart, *supra* note 110, at 184.

¹¹⁴ *Id.* at 188.

¹¹⁵ *See id.* at 184.

¹¹⁶ *See id.*

¹¹⁷ FROLIK, *supra* note 66, at 166.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 188.

¹²² *Id.* at 184.

¹²³ FROLIK, *supra* note 66, at 184.

reassuring them they will have a place to go if they can no longer live independently. Because of this system, as with insurance, the solvency of a CCRC is critical to maintain the financial commitments made in their admission agreements.¹²⁴

E. Assisted Living Facilities

Assisted Living Facilities (ALFs), while a much more recent development than CCRCs, are expected to be the fastest growing option for senior living in America and globally.¹²⁵ Historically, as seniors became less able to live independently, they went from aging in place directly to a nursing home.¹²⁶ Today, many seniors who can no longer live fully independently, but do not require regular, more attentive care, opt to live in an ALF. Between 1998 and 2015, ALF's increased from around 11,459 to nearly 40,000 in the United States.¹²⁷ ALFs emerged largely in response to the rising senior population and consumer demands.¹²⁸ ALFs are expected to "bear the brunt" of the anticipated boom in seniors in the coming years.¹²⁹

The needs of ALF residents vary greatly. For example, some residents may only have minor physical or mental limitations and need assistance in, for example, bathing and medicine management; whereas, other residents may have more heightened needs and require closer attention.¹³⁰ Residents should, however, be able to maintain some sense of autonomous living in an ALF.¹³¹ Most residents move to an ALF near where they previously lived.¹³² As the prevalence of ALFs has grown, it has become easier for many Americans to find an ALF nearby. Some residents may be temporary, having just been released from the hospital and not quite ready to be back at home, but not in need of a nursing home either. In this situation, many ALFs have rooms designated for temporary residents.¹³³

Another group of temporary residents are those who are in the ALF as a form of respite care for their regular caregiver. For example, consider an elderly

¹²⁴ *Id.* at 193.

¹²⁵ *Global Retirement Communities Market Insights, 2015-2023 - Expand in Countries with a Large Geriatric Population, Collaborate with IT & High-End Medical Devices Companies*, RSCH. & MKTS. (Feb. 14, 2020, 5:13 AM), <https://www.globenewswire.com/news-release/2020/02/14/1985149/0/en/Global-Retirement-Communities-Market-Insights-2015-2023-Expand-in-Countries-with-a-Large-Geriatric-Population-Collaborate-with-IT-High-End-Medical-Devices-Companies.html#:~:text=The%20continuing%20care%20retirement%20community,at%20a%20CAGR%20of%2012.2%25> [https://perma.cc/7BD8-AKUA].

¹²⁶ Zhipeng Lu, *Investigating Walking Environments in and Around Assisted Living Facilities: A Facility Visit Study*, 3 HEALTH ENV'TS RSCH. & DESIGN J. 58, 60 (2010).

¹²⁷ *Id.* at 59; Tony Y. Yang, *Legal Considerations for Assisted Living Facilities*, J.L. & HEALTH 308, 308 (2015).

¹²⁸ Yang, *supra* note 128, at 308.

¹²⁹ *Id.* at 308-09.

¹³⁰ *Assisted Living Facilities: Weighing the Options*, AARP (Oct. 22, 2019), <https://www.aarp.org/caregiving/basics/info-2017/assisted-living-basics.html> [https://perma.cc/NL44-AWDC].

¹³¹ See Yang, *supra* note 128, at 309.

¹³² FROLIK, *supra* note 66, at 196.

¹³³ *Id.*

woman who lives with her daughter full-time, and that daughter is also her primary caregiver. The daughter can check her mother into the ALF while the daughter and her spouse and children take their annual vacation. This allows for local elderly to continue receiving needed day-to-day assistance, while providing a respite for the family that cares for her. This respite can be essential to the emotional and physical well-being of the daughter and her family, and when they return from vacation the daughter can resume the caregiving to her mother that she willingly provides.¹³⁴

Because it is a newer category of elder housing, ALFs do not have as many uniform regulations or comparatively as much case law regarding them.¹³⁵ However, ALF litigation has been growing in recent years as occupancy of ALFs across America skyrockets. To understand the state's role in regulating ALFs, it is important to note that assisted living is "not defined in any meaningful way by federal law."¹³⁶ In fact, the federal government has little to do with regulating ALFs. Regulation of ALFs has primarily become a function of the states, which may account for the federal law's nebulous definition of the institution.¹³⁷ The federal government does, however, help pay for assisted living through Medicaid's Home and Community-Based Services.¹³⁸ Federal authorities have thus far been reluctant to regulate ALFs, despite the fact that federal Medicaid spending on ALF residents will in all likelihood skyrocket as the elderly population grows.¹³⁹ Medicaid is not the only federal entity that will see this kind of spending increase, as housing and veterans' subsidies will continue to grow as well.¹⁴⁰ What makes ALFs different from many elder housing facilities, though, is that ALFs receive a significant portion of their funding from residents and less government contributions than many other elder housing facilities.¹⁴¹

Most states do regulate standards of care for ALFs. This regulation is done "in conjunction with licensure."¹⁴² Of the states that do regulate ALFs, most do so by:

[R]eference to some of the following areas: disclosures, ALF scope of care, third-party scope of care, move-in and move-out requirements, management of medication, facility requirements, patient capacity, staff training and hiring levels, continuing education, and payment policies.

¹³⁴ *Id.* at 197.

¹³⁵ See *Assisted Living Litigation is Growing Dramatically*, PECK L. GRP., <https://www.premierlegal.org/assisted-living-litigation-is-growing-dramatically/> [<https://perma.cc/BH45-KDB6>].

¹³⁶ Reinhart, *supra* note 110, at 8.

¹³⁷ *Assisted Living Litigation*, *supra* note 136.

¹³⁸ See *id.*; Yang, *supra* note 128, at 310.

¹³⁹ Jason M. Breslow, *Mark Parkinson: Assisted Living Regulation is no "Panacea"*, PBS (July 30, 2013), <https://www.pbs.org/wgbh/frontline/article/mark-parkinson-assisted-living-regulation-is-no-panacea/> [<https://perma.cc/4H5E-T69B>].

¹⁴⁰ Yang, *supra* note 128, at 310.

¹⁴¹ *Id.*

¹⁴² *Id.* at 312.

....

. . . Mississippi for example, among other things, regulates: (1) physical facilities such that “[n]o facility may be licensed until it shows conformance to safety regulations,” the scope of care where “the provision of personal care and the addition of supplemental services to include . . . the provision of medical services . . . and emergency response services,” and it regulates the permissible number of beds in a facility.¹⁴³

Also, statutory causes of action have been created to address various harms ALF residents have suffered.¹⁴⁴ For example, Florida statute lists the exclusive legal remedy for applicable ALF claims.¹⁴⁵ These causes of action are sometimes exclusively designed for ALF residents, but most of the legislative changes have merely expanded existing causes of action in tort law.¹⁴⁶ The legislature attempted to clarify common questions related to issues such as standards of care toward the guests by each category of employee, legal duties owed to residents, “legal cause” principles to file suit against ALFs, and types of damages.¹⁴⁷ Florida has a state’s resident bill of rights and the state legislature has implemented a provision allowing ALF residents to sue if they feel those rights have been violated.¹⁴⁸ Florida’s law provides the only mechanism for residents to pursue relief when injury or wrongful death occurs in an ALF. If a state has wrongful death or elder abuse laws, there may be additional causes of action available to a plaintiff.¹⁴⁹

F. Nursing Homes

Perhaps the best-known category of housing for the elderly is nursing homes. Historically, elderly persons typically moved from the house in which they retired to a nursing home as their health declined. However, now there are many “in-between” options, as discussed above.¹⁵⁰ As a result of more options for elder housing, the percentage of nursing home residents has declined over the last twenty-five years.¹⁵¹ According to Lawrence Frolik, “[i]n 2004, about 4 percent or 1.32 million of those age 65 or older reside in a nursing home. About

¹⁴³ *Id.* 312–13 (citing MISS. CODE ANN. § 15-3-1 (2014)).

¹⁴⁴ See MELVIN B. WRIGHT, STATUTORY TORT CLAIMS AGAINST ASSISTED LIVING FACILITIES IN FLORIDA 8, <https://www.thefloridafirm.com/sites/www.thefloridafirm.com/files/statutorytortclaimsassistedlivingfacilitiesflorida.pdf> [<https://perma.cc/BZZ6-XZ6J>] [hereinafter STATUTORY TORT CLAIMS]; Yang, *supra* note 128, at 313.

¹⁴⁵ Yang, *supra* note 128, at 313.

¹⁴⁶ *Id.*

¹⁴⁷ STATUTORY TORT CLAIMS, *supra* note 145, at 8.

¹⁴⁸ FLA. STAT. ANN. § 429.28 (West, Westlaw through 2020 Second Reg. Sess. of 26th Legis.); STATUTORY TORT CLAIMS, *supra* note 145, at 8–9 (citing FLA. STAT. ANN. § 429.29 (2014)); Yang, *supra* note 128, at 313.

¹⁴⁹ Yang, *supra* note 128, at 313; See STATUTORY TORT CLAIMS, *supra* note 145, at 18–24.

¹⁵⁰ See FROLIK, *supra* note 66, at 311.

¹⁵¹ *Id.*

14 percent of those age 85 or older reside in such homes.”¹⁵² Though often disparaged, nursing homes exist because they can, for the most part, provide safe and efficient care to some of society’s most vulnerable citizens.¹⁵³

“Nursing Home” can be used to describe a number of kinds of facilities, but federal law defines them as an

[I]nstitution that provides skilled nursing care or rehabilitation services for injured, disabled, or sick persons. Nursing homes are uniquely licensed by states as residential facilities permitted to employ medical personnel to provide health care to residents, though the level of care does not rise to that provided in a hospital.¹⁵⁴

While states are the primary regulators of nursing homes, the federal government has also enacted guidelines to govern nursing homes that participate in Medicare and Medicaid.¹⁵⁵ More than half of all nursing homes residents receive Medicaid reimbursement; so nursing homes have an added incentive to comply with federal rules so that they may continue to be able to take patients receiving federal assistance.¹⁵⁶

Traditional nursing homes differ from ALFs in several ways. Most apparently, nursing homes provide a level of care that is much higher than ALFs.¹⁵⁷ While some ALF residents could still hypothetically live independently, nursing home residents are typically incapable of living on their own.¹⁵⁸ Most nursing home residents have significant physical and cognitive impairment, thus those facilities offer substantially more patient supervision.¹⁵⁹ In contrast, ALFs, usually afford patients more independence than their nursing home counterparts, while still maintaining some supervision.¹⁶⁰ Many if not most ALF residents do, however, suffer from some sort of physical or cognitive limitation.¹⁶¹ For example, many ALF residents require bathing assistance.¹⁶² Because of this, ALFs typically provide a range of services that promote quality of life and independence, including meals, medication, personal care, medication management, social services, housekeeping, social interaction, transportation, laundry, and emergency response.¹⁶³ Essentially, ALFs bridge the gap for seniors between purely independent living and traditional nursing homes.¹⁶⁴

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ FROLIK, *supra* note 66, at 311.

¹⁵⁵ Marshall B. Kapp, *Legal Anxieties and End-of-Life Care in Nursing Homes*, 19 ISSUES L. & MED. 111, 125–26 (2003).

¹⁵⁶ FROLIK, *supra* note 66, at 313.

¹⁵⁷ *Id.* at 311.

¹⁵⁸ *See id.* at 312.

¹⁵⁹ *Id.* at 313.

¹⁶⁰ *See id.* at 312.

¹⁶¹ *See id.*

¹⁶² *See* FROLIK, *supra* note 66, at 312.

¹⁶³ *See generally id.* at 311–13.

¹⁶⁴ *See id.* at 313.

Under federal law, all Medicaid-certified nursing facilities must have a Preadmission Screening and Annual Resident Review (PASRR).¹⁶⁵ This process is designed to identify potential residents who may be mentally ill or mentally handicapped to determine if that particular facility is appropriate for them.¹⁶⁶ Nursing homes are not required to admit the mentally ill or mentally handicapped.¹⁶⁷ The term “mentally ill,” however, does not include individuals who are diagnosed with dementia, such as Alzheimer’s disease.¹⁶⁸

Upon admission to a nursing home, the resident’s unique needs and the services needed to provide for them must be addressed.¹⁶⁹ In a more institutional setting, if quality of care begins to decrease it may not be as obvious if the resident does not receive frequent visitors who would see them consistently and could note such changes.

One of the largest concerns of the elderly and their families as they consider whether a nursing home is the next appropriate move is the cost.¹⁷⁰ Cost concerns are not unfounded, as the median monthly cost of staying in a nursing home in 2019 was \$7,513 for a semi-private room and \$8,517 for a private room.¹⁷¹ Costs in rural nursing homes are typically well below those of urban areas.¹⁷² Paying for nursing home care is a challenge for many seniors, and while some can pay for it out of their retirement pensions many rely on savings and help from children or loved ones.¹⁷³ While Medicare and Medicaid pay over half of all nursing home costs, this is in the aggregate sense.¹⁷⁴ There are still many seniors that cannot afford to live in a nursing home despite existing federal programs. Unfortunately, government assistance for long term care services is unevenly distributed among regions, ethnicities, and economic subpopulations.¹⁷⁵

The demand for long-term care often boils down to cost of care compared to how much a senior can pay and availability to take on more residents in facilities. Many nursing home residents are admitted for rehabilitation after a

¹⁶⁵ PASRR TECH. ASSISTANCE CTR., 2019 PASRR NATIONAL REPORT: A REVIEW OF PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR) PROGRAMS 1 (2019), <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/2019-pasrr-national-report.pdf> [<https://perma.cc/9FVR-CRKE>].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Mental Illness and Dementia: Similarities and Differences*, PATHWAYS, <https://pathwayshealth.org/hospice-topics/mental-illness-and-dementia-similarities-and-differences/> [<https://perma.cc/4HCN-7KTH>].

¹⁶⁹ FROLIK, *supra* note 66, at 203.

¹⁷⁰ FROLIK, *supra* note 66, at 313.

¹⁷¹ *Cost of Care Survey*, GENWORTH FIN., INC., <https://www.genworth.com/aging-and-you/finances/cost-of-care.html> [<https://perma.cc/LGH7-DN8R>].

¹⁷² FROLIK, *supra* note 66, at 312.

¹⁷³ *Id.* at 313.

¹⁷⁴ *Id.*

¹⁷⁵ Barbara Gay, Ruth Katz & James H. Johnson, Jr., *Preparing for LTC Financing Reform: How Can Racial Disparities Be Addressed?*, AM. SOC. ON AGING (2019), <https://www.asaging.org/blog/preparing-ltc-financing-reform-how-can-racial-disparities-be-addressed> [<https://perma.cc/SQ65-BTKG>].

stay in the hospital and use their Medicare coverage to help pay the associated costs.¹⁷⁶ Also, many nursing home residents start out their stay at a nursing home facility by paying with funds from their savings or insurance.¹⁷⁷ Many of those residents, however, find that due to the high cost of long-term care they eventually have to apply for Medicaid.¹⁷⁸

V. A GROWING DEMAND FOR HOUSING AND POSSIBLE SOLUTIONS

To expand on the 2020 projections made in the introduction, the Center for Housing recently projected that by 2050 the population of individuals sixty-five years old and older will grow 120 percent from present rate to more than eighty-eight million.¹⁷⁹ That amounts to 1 in every 5 Americans being sixty-five or older. They have also projected by 2050 there will be nineteen million Americans eighty-five years old and older.¹⁸⁰ Unfortunately, low-income seniors are poised to have the most difficulties in the future as housing demands increase.¹⁸¹ At present, nearly half of low-income seniors spend fifty percent or more of their monthly income on housing.¹⁸² Typically, the older a person gets, the greater the percentage of their income they spend on housing.¹⁸³ As seniors are usually on a fixed income, the costs associated with housing (rent, maintenance, utilities, etc.) usually rise as the years pass giving seniors less purchasing power for their fixed income.¹⁸⁴

One concern for policy makers is that even now available federal funding for housing subsidies is not able to keep pace with the demand.¹⁸⁵ This demand does not only apply in the elderly housing context, but the elderly make up a significant and ever-growing portion of those who need housing subsidies to help find safe and affordable housing.¹⁸⁶ Problems such as this will only continue to grow in the coming decades if they go unaddressed. There are a few solutions that could be pursued in response to this growing concern.

First, lawmakers could make housing more affordable by offering tax relief programs for households that qualify based on income or age or both.¹⁸⁷ Home repairs are usually deductible, but there are other possible policy considerations as well. For example, either making a large mortgage payment, or paying the

¹⁷⁶ *Id.* at 313.

¹⁷⁷ *Id.*

¹⁷⁸ Everette James, Walid F. Gellad & Meredith Hughes, *In This Next Phase of Health Reform, We Cannot Overlook Long Term Care*, HEALTH AFFAIRS (Mar. 16, 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170316.059218/full> [<https://perma.cc/F84Y-23W7>].

¹⁷⁹ BARBARA LIPMAN, JEFFREY LUBELL & EMILY SALOMON, CTR. FOR HOUS. POL'Y, HOUSING AN AGING POPULATION: ARE WE PREPARED? 1–2 (2012), <https://nhc.org/wp-content/uploads/2017/09/AgingReport2012.pdf> [<https://perma.cc/K94G-NLCJ>].

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 4, 8.

¹⁸² *Id.* at 8.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 1, 8.

¹⁸⁵ LIPMAN ET AL., *supra* note 180, at 16.

¹⁸⁶ *Id.* at 1.

¹⁸⁷ *Id.* at 17.

mortgage balance from retirement accounts without tax consequences could help seniors live on their retirement income and Social Security without the burden of paying down the mortgage every month. Likewise, using money from the sale of assets (e.g., automobiles, boats, ATVs, motor homes, real property, etc.) toward one's mortgage without tax consequences could help seniors downsize and pay down their mortgage while saving some money on taxes related to those transactions.

Second, use block grants to help landlords and low-income homeowners retrofit dwellings with things like safety handles in showers and ramps over stairways to help elderly people be less susceptible to falling.¹⁸⁸ The grants could also go toward helping with maintenance and labor costs on home upkeep. This could make it possible for many seniors to age in place longer than they otherwise might be able to, relieving some demand on elder-specific housing facilities like ALFs and CCRCs. Furthermore, when seniors are able to age in place, they can avoid the psychological trauma of moving out of their home and leaving behind their friends and neighbors.

Third, local social services could connect residents to social services and let seniors know what options are available to them by way of Medicaid, other assistance programs, and local organizations who offer programming and help to seniors in the area.¹⁸⁹ Many counties across America have designated offices for senior services. For example, the author's home county of Jefferson County, Alabama, has a department committed "to provide health and education awareness, transportation services and other resources to enhance the lives of senior citizens throughout Jefferson County."¹⁹⁰ Local organizations that are aware of the availability of federal, state, and local grants as well as other options for seniors are perhaps best suited to spread the word about available services as these organizations are actually interacting with local seniors and more attuned to the unique needs of their community. These organizations also provide social opportunities for seniors and the chance to discuss complex matters like grants and federal programs in a face-to-face manner.

VI. CONCLUSION

Due to the influx of children born from the late 1940s to early 1960s, the "Baby Boomer" generation has brought societal challenges with it at every step. Decades ago, medical facilities had to find ways to accommodate the rising number of babies being born. Today, America faces a shortage of housing for the elderly that will continue to worsen unless housing is expanded at all levels of care. Housing concerns for seniors is growing and more housing units must be created in response. In addition to more housing, lawmakers should recognize the unique housing needs of an aging population and offer appropriate remedies to help offset the difficulties many seniors will face in the coming decades. The

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ JEFFERSON CTY., ALA., *Senior Services*, <https://www.jccal.org/Default.asp?ID=355&pg=Senior+Citizens+Services> [<https://perma.cc/NC4U-V4B9>].

production of a variety of housing types, serving persons of low and middle incomes will be increasingly needed in the future. These options can range from single-family home communities, to assisted living facilities, to Continuing Care Retirement Communities and nursing homes. Expanding all of these options are essential to sustaining America's rapidly increasing elder population.¹⁹¹

¹⁹¹ AFFORDABLE HOUSING, *supra* note 1.