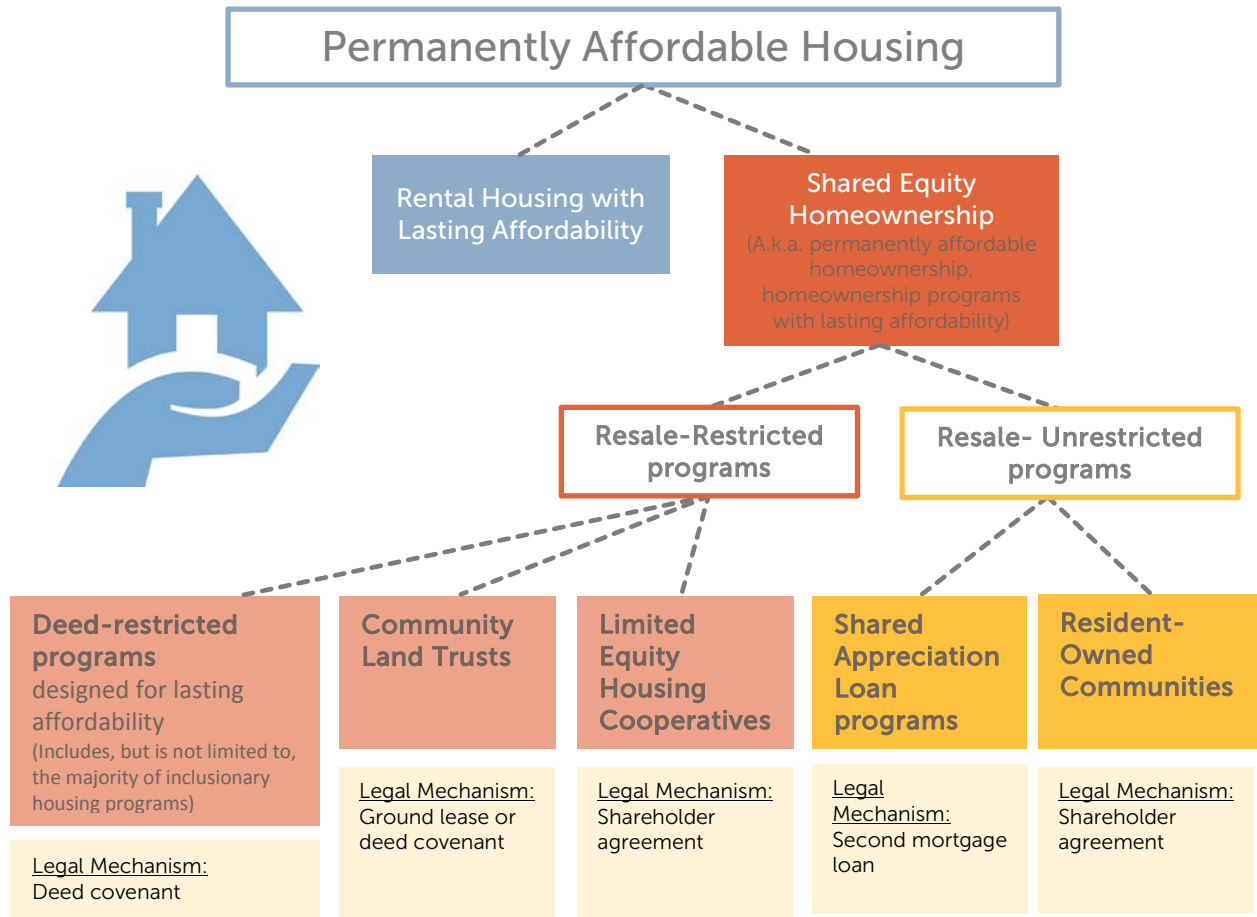


## PERMANENTLY AFFORDABLE HOUSING: Sector Chart & Glossary of Terms



### Models & Submodels:

**Permanently Affordable Housing (PAH):** PAH refers to all types of housing with lasting affordability. These types include rental or homeownership units created by nonprofits (e.g. community land trusts (CLTs, CDCs), or public entities (e.g. inclusionary housing programs) that utilize various legal mechanisms to ensure the unit remains permanently affordable (hereinafter “PAH programs”). Differing from the shorter affordability periods required by federal programs to support the production of affordable housing, these organizations opt to maintain the affordability of housing over the long-term in order to *preserve* the affordable housing stock and the public’s investment in affordable housing production.

**Rental Housing with Lasting Affordability:** Some PAH programs preserve the lasting affordability of rental housing. To do so, organizations record a deed covenant on the rental property with a long-term affordability period. Some CLTs protect the ongoing affordability of rental units by also retaining ownership of the land under these rental unit(s).

**Shared Equity Homeownership (SEH):** SEH is an umbrella term for programs that provide homeownership units with lasting affordability. Sometimes, SEH providers are referred to as “permanently affordable homeownership programs” or homeownership programs with “lasting affordability” or “long-term affordability.” SEH programs make a one-time investment to create a home that is affordable for purchase by a low- to moderate-income homebuyer. In return for purchasing a home at an affordable cost, the homeowners agree to limit their returns upon resale. In effect, homeowners “share” some of the proceeds from resale to pay the homeownership opportunity forward to the next low- or moderate-income household who buys the home.

**Resale-Restricted programs:** The majority of SEH programs are resale-restricted programs, meaning that they restrict the maximum price for which the home may be resold. Hence, low- to moderate-income buyers purchase and resell the homes at prices below fair market value in order to keep the home affordable. Resale restrictions are set forth in a legal contract between the homeowner and the SEH program.

***Limited Equity Housing Cooperatives (LECs):*** LECs are traditionally stand-alone corporations that are owned collectively by low- to moderate-income residents. Beyond the initial subsidy to make the homes affordable, the corporation typically obtains financing through a blanket mortgage. Individual residents may or may not need to obtain an individual share loan in order to buy into the cooperative corporation. Through their incorporation documents, the cooperative declares its corporate purpose to be the provision of affordable housing to low- to moderate-income households. The shareholder agreement, signed by all residents, further stipulates and specifies resale restrictions. Many LECs have a “sponsor” or “steward,” which is a government or nonprofit organization that assists residents to: 1) establish the cooperative and its legal documents, policies, and procedures; 2) secure development financing, permanent financing, and the initial subsidy to make the property affordable; and 3) provide ongoing support and monitoring for successful resident governance, property management, and affordability compliance. The largest steward of LECs is the Urban Homesteading Assistance Board, which serves LECs in New York City.

***Community Land Trusts (CLTs):*** The traditional CLT model separates the title to the underlying land from the title to the improvements (i.e. built structures), although some states prohibit the legal separation of the land from the improvements. In a typical CLT, the community land trust retains ownership of the land and the homeowner owns and finances the purchase of the improvements. The homeowner is also given a leasehold interest in the land (and

pays a nominal monthly fee to the CLT to lease the land), which is secured by a renewable ground lease that has a 50-99 year term, depending on state law. Additionally, the CLT may subsidize the property beyond the cost of the land to ensure the home is affordable for their targeted income levels. In effect, purchasing only the improvements allows homeownership to be affordable to low- to moderate-income households, as the household only needs to secure a mortgage loan for the affordable purchase price. The homeowner signs a ground lease (or sometimes, a deed covenant) to stipulate the resale restrictions.

***Deed-restricted programs designed for last affordability (DR):*** Homeownership programs may utilize deed covenants to create lasting affordability (these programs are hereinafter “DR programs”). DR programs either directly (through funds) or indirectly (through inclusionary zoning requirements) subsidize the cost of a home to make the purchase price affordable for low- to moderate-income homebuyers. Hence, the homeowner obtains a mortgage loan for the entire property, including both land and home, for an amount well below fair market value. The homeowner signs a deed covenant (also referred to as a “deed restriction” or “deed-restricted covenant”) that stipulates resale restrictions. The vast majority of deed-restricted programs designed for lasting affordability are inclusionary housing programs (also referred to as “inclusionary zoning”).

**Resale-Unrestricted programs:** Some SEH programs do not resale-restrict the price for which the home may be sold. Instead, these types of programs allow homeowners to sell homes at fair market value. In legal documents, they stipulate how a sale or transfer may take place to ensure the homes remain affordable for next low- to moderate-income buyer.

***Shared Appreciation Loan Programs (SALs):*** Shared appreciation loan programs typically utilize a second mortgage loan that is for a 30-year term with 0% interest (or very low interest) and is due-upon-sale. In effect, this second mortgage loan operates as a “subsidy” to make the home affordable for low- to moderate-income households. Differing from resale-restricted programs, the home is bought and sold for the fair market value. The nonprofit or public entity stipulates the share of the appreciation that goes to the homeowner and to the entity upon resale either in the second mortgage loan documents or an accompanying deed covenant. Receiving a portion of the appreciation allows the nonprofit or public entity to increase the amount the SAL that is provided to the next low- to moderate-income buyer in order to keep pace with the market.

***Resident-Owned Communities (ROCs):*** Manufactured housing is one of the dominant sources of affordable housing in the United States and is predominantly provided by the private market. While manufactured homes tend to be relatively affordable and often depreciate in value, the land under manufactured housing communities tends to increase in value and private lessors frequently escalate ground lease rents to unaffordable prices, rendering residency unaffordable. To combat this trend, some manufactured housing communities have organized

(typically with the support of ROC-USA) to form resident-owned communities (ROCs) whereby resident controlled cooperatives purchase and retain ownership of the land while residents purchase and retain ownership of their manufactured homes. Residents may then join the cooperative by purchasing (and often financing) shares into the cooperative corporation. In order to do so, the residents sign a shareholder agreement. Ultimately, ROCs operate as a hybrid model whereby the cooperative ensures that shares and ground lease fees remain affordable to current and future residents; however, the manufactured housing remains resale-unrestricted, as manufactured homes by their nature tend to serve low- to- moderate-income households and remain affordable over time.

## Legal Mechanisms for Shared Equity Homeownership Programs

### **Primary Legal Mechanisms:**

A variety of legal mechanisms may be used to create shared equity homeownership (SEH) opportunities. These legal mechanisms, reviewed below, typically stipulate:

- Use and occupancy restrictions (e.g. primary residence requirements);
- Resale restrictions, including:
  - the definition of an eligible buyer (i.e. the program or an income-eligible, qualified buyer)
  - the resale formula that establishes a maximum resale price for resale-restricted programs or a shared appreciation formula for shared appreciation loan programs;
- Additional requirements (e.g. fees owed to the program, program approvals of financing or capital improvements).

***Shareholder agreement:*** Shareholder agreements are typically utilized in limited equity housing cooperatives or resident-owned communities, whereby a resident purchases an affordable share into the corporation in order to become a “shareholder.” In cooperatives, the corporation typically owns the land and the improvements (i.e. building or built structures) and the shareholder agreement gives the resident an ownership stake in the cooperative corporation and a long-term right to occupy their unit. Shareholders do not own real property, as in a condominium model. The shareholder agreement further stipulates the ongoing relationship between the cooperative and the shareholder, including, but not limited to, resale restrictions. In ROCs, the corporation typically owns only the land under which manufactured housing sits. Therefore, in an ROC’s shareholder agreement, residents are responsible for purchasing and financing the manufactured home which is resale-unrestricted.

***Deed covenant:*** Deed covenants (also called “deed restrictions”) are the most common legal mechanism used by affordable housing programs (both rental and homeownership) to ensure compliance with federal or local program requirements. However, deed covenants may also be designed specifically to create SEH opportunities. The majority of condominiums that provide SEH opportunities utilize a deed covenant even if a CLT is involved. In most states, ground leasing under a condominium is not allowed since the

land cannot be segmented and leased to individual homeowners. The vast majority of inclusionary housing programs utilize deed covenants to resale-restrict inclusionary homeownership units. Like conventional homeownership, homebuyers own the property and obtain mortgage financing. The difference with a deed restriction is that buyers are purchasing the property at an affordable purchase price rather than fair market value.

Notably, deed covenants designed for SEH sometimes only have 30-year terms. These short terms are due to state rules against perpetuities the allowable terms vary significantly by state. In these instances, affordability of homes is preserved by ensuring the SEH program has the preemptive option to purchase the home and may transfer this option to an eligible buyer. Additionally, deed-restricted programs designed for SEH also require every new homeowner sign a new deed covenant with a new term. That way, the affordable home is preserved and serves subsequent low-to-moderate-income homebuyers.

***Ground lease:*** The vast majority of CLTs utilize renewable, 99-year ground leases to create SEH opportunities. The homeowner leases the land from the CLT for a nominal monthly ground lease fee while s/he owns and obtains mortgage financing for the improvements. Notably, sometimes the CLT provides additional subsidy beyond the fair market value of the land in order to make the home affordable for a low-to-moderate-income household. Even though ground lease durations are longer than most deed covenants, CLTs have a preemptive option to purchase the home or to transfer this option to an eligible buyer, and they also require every new homeowner sign a ground lease with a new term.

***Shard appreciation loans:*** Second mortgage loans that share appreciation may be used to create SEH opportunities, although few programs currently utilize this legal mechanism. These types of SAL programs should not be confused with other “shared appreciation loans” available in the private market, which are profit-driven first mortgage loan products. SEH programs that utilize SALs design them to make homeownership significantly more affordable to low-to moderate-income buyers as well as to recoup the second mortgage and some portion of the appreciation so that a subsequent SAL can be made to subsequent low-to moderate-income purchaser of a property. Typically, the second mortgage loan has a 30-year term with 0% interest and is due-upon-sale. The nonprofit or public entity using SAL typically records a deed covenant stipulating the program’s requirements and resale requirement along with loan documents. The SAL program retains the preemptive option to purchase the home or to transfer this option to an eligible buyer in order to keep the same home affordable to next buyer.

### **Supporting Legal Documents:**

Notably, many SEH programs record additional legal documents to comply with their obligations under various funding sources, to establish additional protections to preserve the public’s investment, or to promote positive homeownership outcomes. These supporting documents may vary by program type, program practice, and state laws.

***Deed of trust:*** Almost all SEH programs record a deed of trust along with their primary legal mechanism. The deed of trust helps to ensure that the primary legal mechanism is not overlooked during title searches. A deed of trust frequently secures the owner's obligations and the financial investment in the property.

***Letter of attorney's acknowledgement:*** Some SEH programs will require that a third-party attorney reviews all of the legal documents at home purchase with the homebuyer to ensure thorough and objective information was provided to the homebuyer to comprehend the transaction, ownership arrangement, and restrictions.

***Riders on legal contracts:*** While many SEH programs have "model" or "baseline" legal contracts, it is common practice to add riders to ground leases, deed covenants, or other legal contracts. The Riders override some of the terms in the legal contracts. Sometimes these riders address requirements set forth by funding sources; however, oftentimes, they reflect changes required by mortgagees, Fannie Mae, etc. For instance, Fannie Mae has Form 2100, which is Fannie Mae's "Community Land Trust Ground Lease Rider."

***Permitted mortgage agreement (PMA):*** Many lenders allow SEH programs to record a Permitted Mortgage Agreement, which delineates the obligations of each party (the homeowner, first mortgagee, and the SEH program). For instance, the PMA may provide the SEH program the right of first offer to purchase the home from the mortgagee if foreclosure occurs. The PMA may also require either the Mortgagee or the homeowner to provide copies of first mortgage lender or servicer notifications to the SEH program.

***Third-party authorization:*** Oftentimes, the Mortgagee will ask a homeowner to sign a Third-Party Authorization so that the SEH program and Mortgagee or servicer may share information on home purchase or mortgage repayment.