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Articles of Lasting Value for Leaders of Cooperative Housing



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The National Association of Housing Cooperatives is a nonprofit national federation of housing cooperatives, other resident-owned or -controlled housing, professionals, organizations and individuals interested in promoting cooperative housing communities. Incorporated in 1960, NAHC supports the nation's more than a million families living in cooperative housing by representing cooperatives in Washington, D.C. and by providing education, service and information to cooperatives.

Mission Statement

NAHC's mission is to support and educate existing and new cooperative housing communities as the best and most economical form of homeownership.



**National Association of
Housing Cooperatives**

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If you are interested in writing an article for a future issue of the *Cooperative Housing Journal*, contact the editor to provide an outline of your article idea.

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Who is the Real Employer?

By Randall A. Pentiuk, Esq. & Kerry L. Morgan, Esq.

Are you a Joint Employer?

Recent legal decisions have raised new concerns for cooperative housing corporations and management companies in connection with employer responsibilities and obligations under the Fair Labor Standards Act. More and more, businesses are changing staffing models by, for example, sharing employees or using third-party management companies, independent contractors, staffing agencies or labor providers. As a result, joint employment has become more common. Joint employers are responsible, both individually and jointly for compliance with the Fair Labor Standards Act (FLSA).

Frequently, employees are hired by either the cooperative board or by the management company. In some cases, the management company will hire employees on behalf of the cooperative, and once hired will become employees of the cooperative. Additionally, there are instances where some employees are hired and directly supervised by the cooperative but are paid as employees of the management company. At times, the roles and responsibilities of the cooperative board and management company are not clearly defined or adhered to. In severe cases, both the management company and the cooperative direct and supervise the employee. When this type of situation occurs, it can create the illusion of joint employment. Indeed, who is the real employer—the management company or the cooperative, or in the worst of all worlds, both?

In some instances, it may be easy to determine who is the real employer; however, the legal landscape is changing. Both cooperative boards and management companies must be careful to avoid creating joint employer situations. Unfortunately, the rules and standards are much less forgiving. Recent legal decisions have made it easier for the Department of Labor (DOL) or a state wage and hour enforcement agency to find that *both* the

cooperative board and the management company are the mutual or joint employers of employees. With joint employment, comes joint liability.

The Fair Labor Standards Act

On January 20, 2016, the Department of Labor, Wage and Hour Division (WHD) released an Administrator's Interpretation (AI). This AI set forth the DOL's position as it relates to joint employment under the FLSA.

The FLSA establishes minimum wage, overtime pay, record keeping and youth employment standards for private and public employees. The scope of employment relationships subject to the FLSA is broad. The DOL points out that

the FLSA defines "employee" as "any individual employed by an employer" and "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee." The FLSA's definition of "employ" includes "to suffer or permit to work."

The DOL states that the concept of joint employment should be broadly defined. Specifically, it should be defined more broadly than the common law concepts of employment and joint employment. Unlike the common law control test, which analyzes whether a worker is an employee based on the employer's control over the worker and not the broader "economic realities" of the working relationship, the "suffer or permit" standard broadens the scope of employment relationships covered by the FLSA.

Determining if Joint Employment Exists

When joint employment exists, all the joint employers are jointly and severally liable for compliance with the FLSA. In other words, each joint employer is individually responsible, for example, for the entire amount of wages due. If one employer cannot pay the wages due to cash flow,

Joint employers are responsible, both individually and jointly for compliance with the Fair Labor Standards Act (FLSA).

bankruptcy or other reasons, then the other “employer” must pay the entire amount of wages. The law does not assign a proportional amount to each employer.

The most likely scenarios for joint employment are: 1) where the employee has two (or more) technically separate but related or associated employers, or 2) where one employer provides labor to another employer and the workers are economically dependent on both employers.

According to the DOL, joint employment exists in situations in which the employee has employment relationships with two or more employers, and the employers are sufficiently associated or related with respect to the employee such that they jointly employ the employee. This type of joint employment is sometimes called “horizontal joint employment.” The DOL will consider factors to determine whether “horizontal joint employment” exists:

- ▶ Who owns the potential joint employers (e.g. does one employer own part or all the others or do they have any common owners);
- ▶ Whether the potential joint employers have overlapping officers, directors, executives or managers;
- ▶ Whether the potential joint employers share control over operations (e.g. hiring, firing, payroll, advertising, overhead costs);
- ▶ Whether the potential joint employers’ operations are intermingled (e.g. whether the same person schedules and pays the employees regardless of which employer they work for);
- ▶ Whether the potential joint employers share supervisory authority for the employees; and
- ▶ Whether the potential joint employers treat the employees as a pool of employees available to both;
- ▶ The extent to which the work performed by the employee is controlled or supervised by the potential joint employer beyond a reasonable degree of contract performance oversight;
- ▶ Whether the potential joint employers share clients or customers; and
- ▶ Whether there are any agreements between the potential joint employers.

This is not an all-inclusive list of factors that could potentially be considered and furthermore, not all or most of the foregoing facts need to be present for joint employment to exist.

According to the DOL, joint employment also exists where a worker is, as a matter of economic reality, economically dependent on two employers: an intermediary employer (such as a staffing agency, subcontractor or other labor provider) and another employer who engages the intermediary to provide workers. This type of joint employment is sometimes called “vertical joint employment.” The focus of this type of joint employment is the employee’s relationship with the potential joint employer and whether that employer jointly employs the employee.

The DOL states that the threshold question in a vertical joint employment case is whether the intermediary employer is actually an employee of the potential joint employer. In cases where the intermediary employer is an employee of the potential joint employer, then all the intermediary employer’s employees are employees of the potential joint employer, too, and there is no need to conduct a vertical joint employment analysis.

However, if it is determined that the intermediary employer is not an employee of the potential joint employer, then the DOL instructs that the vertical joint employment analysis should be conducted to determine whether the intermediary employer’s employees are also employed by the potential joint employer. The analysis must be an “economic realities” analysis and cannot focus solely on control.

The DOL is seeking to hold more employers liable for payment of wages and is trying to expand the law’s reach to as many employers as possible. In the cooperative context, this means the DOL is expanding the law’s reach to both the cooperative and management company.

The ultimate question is whether the employee is economically dependent on the potential joint employer. The DOL will consider the following economic realities factors to determine whether economic dependence exists:

- ▶ Whether the potential joint employer has the power to direct, control or supervise the worker(s) or the work performed beyond a reasonable degree of contract performance oversight;
- ▶ Whether the potential joint employer has the power to hire or fire, modify the employment conditions or determine the pay rates or the methods of wage payment for the worker(s);
- ▶ Look at the degree of permanency and duration of the relationship;

- ▶ Look at where the work is performed and whether the tasks performed require special skills;
- ▶ Whether the work performed is an integral part of the potential joint employer's business;
- ▶ The degree to which the employee's work is performed on premises owned or controlled by the potential joint employer;
- ▶ The extent to which the potential joint employer performs administrative functions for the employee (e.g. handling payroll, providing workers' compensation insurance, providing necessary facilities and safety equipment).

These seven factors are not exhaustive as there are likely other economic realities factors that may be considered when determining whether vertical joint employment exists.

Joint Employment Under the Family Medical Leave Act (FMLA)

At the same time, it issued its AI on joint employment under FLSA, the DOL issued guidance on the joint employment relationship under the Family Medical Leave Act. FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with a continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. To be eligible, an employee must: have worked for the employer for at least 12 months; have worked at least 1250 hours during the 12 months preceding the start of leave; and be employed at a worksite where the employer has at least 50 employees within 75 miles.

The DOL issued a "fact sheet" on this topic (See: www.dol.gov/whd/regs/compliance/whdfs28n.pdf). The DOL says that joint employment exists "when an employee is employed by two (or more) employers such that the employers are responsible for compliance with the FMLA." The analysis used to determine whether there is joint employment under the FMLA is the same as the FLSA. Based on the FMLA fact sheet, the WHD notes the importance of joint employment in determining employer coverage and employee eligibility under the FMLA because joint employers' responsibilities under the FMLA vary

depending on whether they are the primary or secondary employer of the employee taking FMLA leave.

Is the employer primary or secondary? According to the WHD, in most cases one employer will be the primary employer, and the other will be secondary. The fact sheet provides a list of factors to determine which is which:

- 1) Who has authority to hire and fire and to place or assign work to the employee?;
- 2) Who decides how, when and the amount that the employee is paid?; and,
- 3) Who provides the employee's leave or other employment benefits?

Of course, employees who are jointly employed by two employers must be counted by both employers, regardless of whether the employee is maintained on one or both employers' payrolls. The employee's worksite is the primary employer's office from which the employee is assigned or to which the employee reports, for purposes of determining whether a jointly employed employee works at a worksite where the employer employs at least 50 employees within 75 miles.

Yet, keep in mind that for cooperative housing entities, the classification scheme as well as FMLA coverage itself may be academic. Only the largest cooperative or the cooperative's management company, if it is the employer, is likely to employ 50 or more employees. In such limited cases, the primary employer bears all the responsibilities under the FMLA including giving required notices, providing FMLA leave itself and maintaining group health insurance benefits during the leave.

Joint Employment and Non-Discrimination Laws

If joint employment is found, both entities may be held responsible for compliance with all applicable laws, including wage and hour, employment protection and non-discrimination laws. This includes making sure non-exempt employees are paid minimum wage for all hours worked and overtime pay for hours worked over 40 in a work week.

Congress has also enacted significant laws prohibiting discrimination by employers.

Congress has also enacted significant laws prohibiting discrimination by employers. For instance, the best-known employment anti-discrimination law is Title VII of the Civil Rights Act of 1964. This law prohibits an employer with 15 or more employees from discriminating on the basis of race, national origin, gender or religion. Under Title VII, it is illegal for an employer to take any of the following actions against an employee based upon his or her race, national origin, gender, or religion:

- ▶ Refuse to hire;
- ▶ Discipline;
- ▶ Fire;
- ▶ Deny training;
- ▶ Fail to promote;
- ▶ Pay less or demote; or
- ▶ Harass.

The bar against discrimination on the basis of gender includes discrimination on the basis of pregnancy. In addition, it is illegal for an employer to adopt a policy or practice that has a “disparate impact” on a protected class, such as by adopting hiring criteria that tend to screen out women or minority group members. If your cooperative is considered an employer, you probably already are aware of these laws. But if your cooperative leaves the hiring and firing of employees to the management company, yet directs the day-to-day assignments of the employees, a joint employment situation may arise. This situation will require your cooperative to become familiar with employment discrimination laws.

Equal Pay Discrimination

The federal Equal Pay Act requires any employer that is already subject to the FLSA to provide equal pay to men and women who perform “equal work,” unless the difference in pay is caused by differences in seniority, merit or some other factor that is not based upon sex.

Age Discrimination

The Age Discrimination in Employment Act (ADEA) bars discrimination against employees or applicants who are over the age of 40, by any employer with 20 or more employees. An employee may often state a claim under

the ADEA if he or she is fired or forced to retire and is then replaced by a younger employee.

Disability Discrimination

The Americans With Disabilities Act (ADA) bars discrimination against those who are disabled. The ADA bars discrimination by private employers with more than 15 employees. Unlike other civil rights laws which protect easily-identifiable classes such as race or gender, in order to be protected by the ADA or the Rehabilitation Act, an employee or applicant must show that he or she is, in fact, disabled, has a history of being disabled or was regarded by the employer as being disabled. Once the employee or applicant makes this showing; however, he or she is not only protected from discrimination but is also entitled to “reasonable accommodation” for the disability if necessary. Reasonable accommodation may include a modified work schedule or work duties, unpaid time off or special devices that will help the employee in the performance of his or her job duties.

National Origin Discrimination

The Immigration Reform and Control Act bars any employer with more than three employees from discriminating against a U.S. citizen, or an “intended citizen” (such as one who may work legally but is not yet a citizen) on the basis of his or her national origin.

State and Local Laws

Many states, counties and municipalities have also enacted anti-discrimination laws that often apply to every employer, no matter how small. Many of these statutes create additional protected classes, such as gays and lesbians, those who have received welfare, those who are married, the unmarried and those who have children. Michigan, for instance, prohibits discrimination if the employer has one employee and prohibits discrimination in “employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.” (See: www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf).

Affordable Care Act (ACA), Section 4980H – The Employer Mandate

What about joint employer status and the ACA? This area of the law is evolving. The ACA added Section 4980H of the Code to require “applicable large employers” to either offer their full-time employees health coverage that meets certain standards or pay a penalty. Employers with at least 100 full-time employees (including full-time equivalent employees) are subject to this so-called “pay-or-play” or “employer mandate” in 2015. For employers with 50 to 100 full-time employees (including full-time equivalent employees), the employer mandate became effective in 2016. An employer who fails to offer “minimum essential coverage” may face a penalty.

For purposes of the Section 4980H penalty, a full-time employee is defined as one working 30 or more hours a week, which the final rule equates to 130 hours a month. Although the hours of part-time employees are taken into account to determine whether an employer is an “applicable large employer,” the penalty itself only applies with respect to full-time employees.

The final rule gives voluminous guidance on how to calculate the 30-hour threshold and is beyond our scope here. However, the rule gives relatively scant guidance on whether the worker is deemed to be an employee in the first place. Yet, businesses with fewer than 50 full-time equivalent employees are exempt from penalties. Again, most cooperatives do not usually employ this many employees. Management companies may be a different story. Boards that use a management company should ask for employee information and mutually work out any concerns. Work to avoid the situation where a large management company of 45 employees for instance and a cooperative with five employees, are not lumped together to cause potential ACA questions regarding coverage. Avoid problems while they are easily avoidable, before the fact.

Both cooperative boards and their management company should examine their employment practices.

The National Labor Relations Board (NLRB)

The NLRB has made dramatic changes to its “joint employer” standard, which will surely lead to more findings of joint employment relationships under the National Labor Relations Act. In the past, joint employment status was determined

based on whether the primary employer actually exercised “direct and immediate” control over the worker’s daily tasks, scheduling, hiring/firing, etc. However, the NLRB has not concluded that “indirect control” is enough to qualify for joint employment status and thus share unfair labor practice liability and bargaining obligations.

This updated standard means stronger grounds for workers to organize unions that represent workers at both joint employers. This means employees can bargain directly with either or both companies, and larger companies will have more resources to give unionized workers what they want.

This theory of joint employment could have enormous implications for businesses that contract for staffing or outsourcing purposes. It could also have a huge impact on employers in the franchisee/franchisor context where, with limited exceptions, franchisors have historically been found not to be joint employers of their franchisees’ employees.

In addition to facing joint liability for labor law violations, entities that are deemed to be joint employers under this new standard may face collective bargaining obligations and find themselves involved in labor disputes between direct employers and labor organizations.

What Employers Can Do Now

The effect of being considered a joint employer is significant. It can lead to expansive liability. Both cooperative boards and their management company should examine their employment practices. Both need to think carefully about whether they may be viewed as joint employers over workers they do not consider to be their employees, and even workers over whom they have little control. If one or both are likely to be considered joint employers, here are some steps that should be considered to decrease this likelihood:

- ▶ Determine who the desired employer should be and stick with it;
- ▶ Avoid confusing structures for directing employee responsibility;
- ▶ If you’re not the real employer, take a hands-off approach by conveying goals to the real employer and letting that entity determine the best means of service;

► Avoid being involved in the interviewing, hiring, firing, training, scheduling, disciplining, approving overtime and otherwise reserving control over workers; and

► Re-examine written agreements with management companies and take steps to revise those agreements to further confirm the “separateness” of the two employers. Indemnification provisions should also be revised to better protect the employer in case an employee of a third-party employer sues both entities under a joint employer theory.

There should be a clear understanding of who is the employer. Both the management company and the cooperative board need to re-assess their different employment relationships, and to the extent possible, work toward defining “Who is the Real Employer” before legal disputes come your way.



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An Update on Cooperative Housing History Research

By Kristin M. Szylvian

Cooperative housing shareholders, directors, managers and staff members share the belief that an understanding of the history of their organization helps them contribute to its stewardship. Many see their housing cooperative as part of a global network of communities that share a similar mission and hold many of the same core values and beliefs. The history of cooperative housing in the United States has and continues to attract the attention of students and scholars interested in residential real estate development patterns and the larger city-building and community formation process. The purpose of the following is three-fold. The first section will identify the recent works published on the history of cooperative housing. The second part offers advice to cooperative housing history researchers. The third section features a brief discussion of cooperative housing history research now in progress.

Recent Works on Cooperative Housing

Students and scholars of New York City have worked diligently in recent years to place the city's cooperative housing movement into a larger political, economic, social and cultural context. In 2016, Columbia University Press issued a revised edition of Richard Plunz's 1990 classic work, "A History of Housing in New York City." This work is a must-read for anyone seeking to understand when, how and why New York City became and has remained, the cooperative housing capital of the United States. "Affordable Housing in New York: The People, Places, and Policies That Transformed a City" is a collection of essays edited by Nicholas Degan Bloom and Matthew Gordon Lasner and published by Princeton University Press in 2015. Cooperative housing is treated as one of many different strategies employed by city and state government, insurance companies, labor unions, philanthropists and others to increase the supply of housing within the economic reach of the typical wage-earner. Co-op City is an example of one of the better-known housing cooperatives that were examined in the book; lesser-known developments, such as Bell Gardens in eastern Queens, originally developed as a cooperative for World War II

veterans, were not overlooked. The research for this volume and other works (including those by the editors and contributors) provided some of the intellectual underpinning for two 2015-2016 museum exhibits and at least two different series of public programs. The response to "Affordable Housing in New York," the exhibits and programs offered convincing evidence of the depth of New Yorkers' support of and respect for cooperative housing's ability to provide quality shelter at a cost that is within the economic means of wage earners.

The United Housing Foundation under the direction of Abraham Kazan, the "father" of U.S. cooperative housing, sponsored one of the largest housing cooperatives in New York City, Rochdale Village, located in the Borough of Queens. In 2010, historian Peter Eisenstadt published "Rochdale Village: Robert Moses, 6,000 Families, and New York City's Great Experiment in Integrated Housing" (Cornell University Press). Influenced by the Civil Rights Movement and the goal to offer middle-income black and white families an urban alternative to suburban flight, Eisenstadt analyzed how the community has changed over time.

Historian Lasner found that some of the affluent householders who stood firm against the forces of urban decentralization chose to live in multi-unit dwellings in city neighborhoods as renters, shareholders in cooperatives and condominium owners. Lasner's "High Life: Condo Living in the Suburban Century," published by Yale University Press in 2012, shows that the co-owned, multi-unit housing that began in 19th-century New York City, now exists in "condo and townhouse complexes coast to coast." In southern California, for example, the Ardmore Development Corporation built attractive garden-apartment housing cooperatives (See: Lasner, "Own-Your-Owns, Co-ops, Town Houses: Hybrid Housing Types and the New Urban Form in Postwar Southern California," *Journal of the American Society of Architectural Historians*, 68, no. 3 (September 2009): 378-403).

Lasner found that the economic, legal, political and cultural support system for multi-unit housing initiatives, including housing cooperatives, paled in comparison to the

infrastructure that protected and promoted the speculative single family housing market. His conclusion was consistent with the 2010 findings of Sukumar Ganapati, author of a comparative study of cooperative housing policy in India, Sweden and the United States, published in the *International Journal of Urban & Regional Research*, 34, no. 2 (June 2010): 365-380. in June 2010.

Cooperative housing's long association with organized labor was the subject of three recent studies. Emily E. Straus completed work on Penn South, the cooperative housing development in the Chelsea section of Manhattan sponsored by the International Ladies Garment Workers Union in collaboration with the United Housing Foundation. See: Emily E. Straus, "Creating a Middle-Income Cooperative Community: Penn South and the Redevelopment of Manhattan's Chelsea Neighborhood," *New York History*, 91, no. 3 (Summer 2010): 197-219.

New York City and its abundant supply of housing cooperatives are also of interest to historian Annemarie Sammartino of Oberlin College. She wrote "Co-op City," for "Affordable Housing in New York: The People, Places and Policies that Transformed a City," the book edited by Bloom and Lasner. (See: Princeton: Princeton University Press, 2015, 179-184). Her recent article, "Mass Housing, Late Modernism and the Forging of Community in New York City and East Berlin, 1965-1989," was published in the *American Historical Review* in 2016 (see: 122: 2 (Spring 2016): 492-521. Sammartino is now at work on a book manuscript entitled "Freedomland: Co-op City and the Story of New York City, 1965-1990." She wrote Co-op City—"the largest cooperative development ever built" and "home to up to 65,000 people--and has served as everything from a symbol of utopian cooperative community, to a site of middle-class urban renewal (during its 1975-76 rent strike), to an eyesore that represents the failure of large-scale urban planning." Her book will consider Co-op City as "a housing development, an experiment in large-scale cooperative living, and a community."

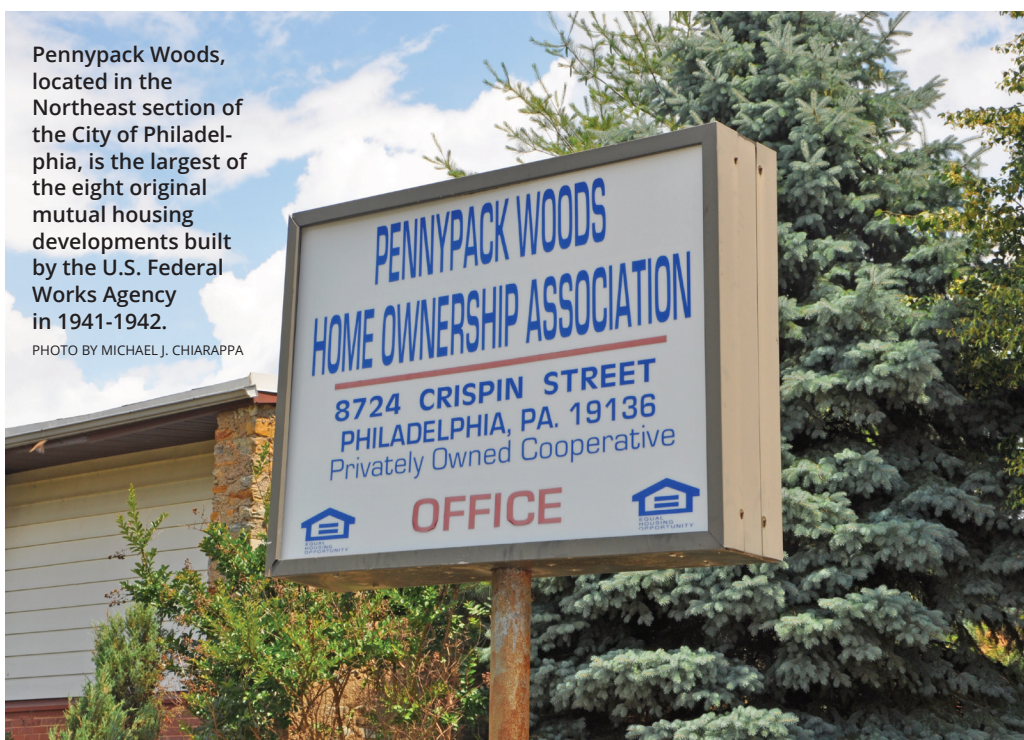
Sammartino anticipates presenting "three narratives that are rarely considered together--urban design, urban neighborhood history and urban political economy--to tell a new story about postwar New York from its literal and figurative margins." The book will "touch on everything from debates about urbanism, white flight (both to Co-op City and away from it), neoliberalism, and the meaning and viability of the middle and working classes in New York."

Hilary Ann Botein showed how the International Longshoremen's and Warehousemen's Union and the United Automobile Workers Union independently undertook cooperative housing development during the 1950s and 1960s in northern California's Bay Area as an alternative to segregated suburbs and inner city neighborhoods. See: Hilary Ann Botein, "Labor Unions and Race-Conscious Housing in the Postwar Bay Area," *Journal of Planning History*, 15, no. 3 (August 2016): 210-229.

In June 2015, Temple University Press published the author's book, "The Mutual Housing Experiment: New Deal Communities for Urban Middle Class." *The Cooperative Housing Quarterly* carried a report about the book shortly upon publication. The book examines a "mutual" or cooperative housing program created in 1940 for defense workers by the Federal Works Agency in collaboration with the Congress of Industrial Organization's Industrial Union of Marine and Shipbuilding Workers of America.

Pennypack Woods, located in the Northeast section of the City of Philadelphia, is the largest of the eight original mutual housing developments built by the U.S. Federal Works Agency in 1941-1942.

PHOTO BY MICHAEL J. CHIARAPPA



Today, residents still mutually own and manage seven of the original eight pilot projects. Planning scholar Barbara Wilson Brown described one of the pilot projects, Avion Village, located in Grand Prairie, Texas, as an early example of sustainable development. See: Barbara Wilson Brown, “Before the ‘Triple Bottom Line’: New Deal Defense Housing as Proto-Sustainability,” *Journal of Planning History*, 14, no. 1 (February, 2015): 4-18.

Eric Follo recently told the story of one of the second-generation mutual housing developments, Kramer Homes, located in suburban Detroit. He observed that Eliel and Eero Saarinen, the famous father and son Finnish architectural team that designed the community in the International Style, would hardly recognize it today because it has been purged of its modernist influences. See: Eric Follo, “Kramer Homes: A Community, Not a Complex,” *Michigan History Magazine*, 97, no. 3, May/June 2013): 55-59.

Eisenstadt, the author of “Rochdale Village,” called “the secondary literature on housing cooperatives, and the cooperative movement in general, inadequate. Johnston Birchall’s “The International Cooperative Movement” (Manchester, UK: Manchester University Press, 1997) is a decent overview but not based on research in primary sources. For the history of limited-equity cooperatives, Joshua Freeman, “Working Class New York: Life and Labor Since World War II” (New York: New Press, 2002) has a useful chapter on housing cooperatives. See also Botein’s dissertation, “Solid Testimony of Labor’s Present Status’: Unions and Housing in Postwar New York City,” (Ph.D diss., Columbia University, 2005). “Affordable Housing in New York: The People, Places, and Policies that Transformed a City” (Princeton, NJ: Princeton University Press, 2016), edited by Bloom and Lasner, has essays on several cooperative developments, including the Amalgamated Housing Cooperative, Rochdale Village and Co-op City. On the latter, see also Annemarie Sammartino, “Mass Housing, Late Modernism and the Forging of Community in New York City and East Berlin, 1965–1989,” *American Historical Review*, vol. 121, no. 2 (2016), 492-521.”

Venturing Forth: Research in Cooperative Housing History

Inspired by the recent works in cooperative housing history, the reader may wish to trace familiar origins of the cooperative. The author asked several fellow members of the

Urban History Association and the Society for American City and Regional Planning History for advice for researchers of cooperative housing history.

Lasner, associate professor of urban policy and planning at Hunter College, City University of New York, offered the following suggestions to those seeking cooperative housing research materials: Lasner said when researching particular housing cooperatives, he generally begins with the archives of digitized newspapers, including the big-city titles offered by ProQuest Historic Newspapers — “which, unfortunately, is only available by institutional subscription at university and other major research libraries — and the myriad neighborhood newspapers offered by services like NewspaperArchive.com, which also tend to have paywalls, but substantially lower ones.” Lasner also called researchers’ attention to “period trade journals in the fields of building, architecture, housing, urban planning and city governance,” noting with frustration that few are currently “indexed or digitized.”

Lasner emphasized the need to visit different kinds of archives and circulating and non-circulating libraries. Lasner said he searches local libraries and historical societies in hope of finding clippings files or other ephemera. In some cases, such as for New York City’s Bell Park Gardens, Lasner said he has also found archives of a cooperative’s newsletters, in that case in the Long Island Room of the Queens Library. He said he also searches photographic archives. “Especially helpful are collections of newspapers that have ended up in research libraries, such as that of the *Los Angeles Herald & Examiner* at the University of Southern California.”

Lasner stated that another potential source are memoirs and other books featuring, or set in, complexes (there are a surprising number of these), as well as “old home” websites. He said many cooperatives enjoy robust communities of former cooperators, mainly people who grew up in complexes and have fond memories. Some have created publicly accessible websites where they share recollections and photos. Lasner said he always attempts to contact the cooperative’s management or board of directors and make a site visit. Many cooperatives maintain good archives and are willing to open them to researchers; managers and directors are also often happy to share their stories. He takes photos on his visits and chats with cooperators. “These kinds of meetings, which often happen by chance, have proved highly fruitful at many places I have researched,” Lasner said.

Eisenstadt recalled that when he completed the research for “Rochdale Village,” he relied heavily on primary sources. He wrote that his “main source was the United Housing Foundation Collection in the Kheel Center for Labor-Management Documentation and Archives at Cornell University.” Other important collections included the Moses papers, which are primarily stored at the New York Public Library, along with smaller collections at the New York City Municipal Archives. The book also drew heavily from approximately 40 oral histories conducted by the author and an oral history of Kazan in the Columbia University Oral History Collection.

An emerging scholar of housing with an interest in cooperative home ownership, Adam Tanaka is a doctoral candidate in urban planning at Harvard University and a research fellow at the Radcliffe Institute. The research for his doctoral dissertation (described below) has familiarized himself with the cooperative housing history resources in the New York metro area. Tanaka’s sources and archives for this research also include Columbia’s Oral History’s interviews with other notable figures in the cooperative housing movement (for example, Louis Pink, Ira Robbins and Jacob Potofsky); the archives of the Citizens Housing and Planning Council of New York; the journals of the National Association of Housing Cooperatives; the periodicals of the United Housing Foundation, including *Co-op Contact* and *The Cooperator*; the publications of specific cooperative housing projects, such as *The Co-op City Times*; Nelson Rockefeller’s gubernatorial papers and the papers of housing economist Louis Winnick at the Rockefeller Archive Center; the United Housing Foundation papers at the Tamiment Library & Robert F. Wagner Labor Archives at New York University; and relevant housing materials in the New York City mayoral archives at the LaGuardia and Wagner Archives at LaGuardia Community College.

Research for the author’s 2015 book, “The Mutual Housing Experiment: New Deal Communities for the Urban Middle Class” took her to publicly-accessible libraries, archives and museums over the United States. The author was also occasionally granted access to private records in offices of housing cooperatives, housing advocacy groups, labor unions and the homes of the men and women who have led, observed or documented the cooperative housing

movement. Small amounts of information on the history of cooperative housing can be found in many different and sometimes unexpected places. Time, patience, telephone calls, personal visits and other types of old-fashioned follow-through are required. Researchers seeking electronic or digitalized sources on cooperative housing history will find their richest sources to be congressional and court records, newspapers and other published accounts. Researchers who can gain access to subscription databases featuring nationally-circulating African American newspapers such as the *Chicago Defender* and the *Pittsburgh Courier*, are afforded the opportunity to follow their reporting on cooperative housing projects, programs and cooperative legislation.

Every cooperative housing researcher must learn how to “mine” the archives, libraries and museums in Washington, D.C. The success of the trip relies considerably on the preparations made before leaving home. It will be necessary to invest quite a bit of time getting familiar with all the potential facilities. A researcher will likely give priority to the Library of Congress and the National Archives, but it is important to remember there are several other specialized libraries of potential value. Regardless of which library or archive is visited first, a researcher needs to frequent the web site for familiarization with the hours of operation, knowing that state and federal holidays, religious holidays, fall, spring, and summer breaks can potentially result in schedule changes. Registration and security procedures will be required to gain access not only to the holdings, but in many cases, the federal buildings themselves.

Every archive or special collections library will have its own photocopying/document reproduction policy. Is photocopying allowed and how much is the cost per page and other fees? Is the photocopying self-service or will the staff copy the material at the end of the visit? Many archives and special collections libraries no longer permit photocopying. They allow or require patrons to provide their own digital cameras. Even if the researcher has a tripod (and some archives do not allow them), shooting a photograph of each document would take about three to four times longer than it would for an experienced researcher to “flag” a document for photocopying. Thus, it

Many cooperatives maintain good archives and are willing to open them to researchers; managers and directors are also often happy to share their stories.

is now necessary to spend far longer in the archives and can increase the researchers' expenses.

The Library of Congress offers an on-line tutorial on how to find items in its vast holdings and prepare for a visit. Researchers are rewarded for their patience in obtaining a library-issued photo identification card with access to dozens of rare and unusual cooperative housing books, reports, periodicals and pamphlets. They can also find unique material pertaining to cooperative housing in the papers of particular members of the House of Representatives or Senate. The Library of Congress also has a small number of still and motion pictures, sound recordings, maps and other types of material pertaining to the history of cooperative housing development. Even though the library's digital catalog searches across all its divisional holdings, it is a good idea to use the library's organizational chart as a check list to make sure the researcher does not overlook any potential sources such as oral history interviews and audio recordings. Researchers can consult the staff about the type of material sought and how to find it.

The Library of Congress offers an on-line tutorial on how to find items in its vast holdings and prepare for a visit.

Throughout the District of Columbia, there are dozens of archives, libraries and museums with holdings of potential interest to cooperative housing researchers. The library of the National Association of Home Builders and the National Building Museum are two examples of specialized, privately-funded organizations that make research materials available. The Department of Labor and the Department of Housing and Urban Affairs (HUD) maintain federally funded libraries of importance to cooperative housing researchers. The latter is located in Room 8141 of the HUD headquarters building at 451 7th Street, Southwest. Reports and publications issued by HUD and its predecessor agencies and housing-related material from other federal agencies and departments and congressional committees can be readily accessed in print form, all in one easy-to-navigate place. Upon leaving the building, the researcher can wave to Catherine Bauer Wurster, whose bust graces the building's lobby. If Congress had listened to Bauer and her fellow "housers" when debating the U.S. Housing Act of 1937, it would have allowed funds for the construction of low-income housing to be loaned to private, non-commercial corporations, including cooperatives. Instead, Congress limited federal housing aid for low-income families to public housing bodies until after World War II.

The National Archives and Records Service administers the National Archives and the family of presidential libraries and museums. The records of interest to cooperative housing students and scholars are housed in the Civil Records Branch in the Archives II building located in University Park, Md.—not the famous Art Deco style archives building located in downtown Washington. Before visiting Archives II, researchers should consult the on-line finding aids that

describe the contents of each record group. They need to familiarize themselves with identification and security procedures and the scheduling involved in requesting and the retrieval of archival material.

All the records deposited at the National Archives retain the arrangement originally developed or imposed by the office, branch or agency that created them. Processing archivists neither rearrange the records nor provide any more than the most basic information describing the bulk of holdings such as inclusive dates. Researchers interested in locating information about a particular housing cooperative or cooperative housing federal program will be able to make the most productive use of their time if they know the exact name of the agency or program that built, financed or insured the cooperative. First-time researchers can easily be overwhelmed by the volume of records and the minimalist processing and description provided. Record Group 196 and Record Group 207--the records of HUD and its predecessor agencies--contain thousands of documents pertaining to cooperative housing, but unless a specific office or program administrator maintained some type of subject file, locating them could be compared to looking for a needle in a haystack.

Researchers seeking information on a certain cooperative or program that was publicly financed, insured or administered might have success at the appropriate presidential libraries. Visitors to the presidential libraries (beginning with Herbert Hoover) interested in cooperative housing can request to view correspondence sent to the president. Although each president had a slightly different filing set-up, all incoming correspondence was categorized by subject. In Independence, Mo. at the Harry S. Truman Presidential Library, it is possible to trace how ideas for cooperative housing development for veterans and former war workers were put aside in favor of the speculative development of suburban areas. President Truman's Executive Office

file can also be used to follow the failed 1950 legislative effort to create a National Mortgage Corporation for Housing Cooperatives. At the Dwight D. Eisenhower Presidential Library in Abilene, Kan. researchers can view correspondence pertaining to the curtailment of the sale of New Deal and World War II residential communities to non-profit mutual housing corporations. Cooperative housing researchers who go to Austin, Texas to visit the Lyndon B. Johnson Presidential Library will find that the president's central office files attest to his efforts to increasing financing opportunities for cooperative home ownership under the Housing Act of 1968. President John F. Kennedy's Boston library affords researchers the opportunity to consult records pertaining to the role the president and his advisers played in the cooperative housing provisions of the Housing Act of 1961. Those interested in the sale or proposed sale of public housing developments to cooperatives should consult the central office file of the Richard Nixon Presidential Library in California and George Herbert Walker Bush Library in Texas.

The presidential libraries also hold the papers of key members of the administration, so researchers should check to see if any were involved in cooperative housing. For example, the papers of John M. Carmody are located at the Franklin D. Roosevelt Library in Hyde Park, N.Y. The first administrator of the Rural Electrification Administration, Carmody became the Federal Works administrator in 1939 just as mobilization began. In 1940 he authorized a pilot program to determine defense workers' interest in cooperative—then called mutual—home ownership.

The private papers of former local, state and federal housing officials, architects, labor unions leaders and reformers who were involved with cooperative housing are located in libraries and archives across the United States. The internet makes it far easier to locate them than it was in years past when the National Union Catalog for Manuscript Groups was the most important tool available to researchers. Cornell University's Olin Library houses the private papers of Warren J. Vinton, a long-serving federal housing economist who reviewed cooperative housing policy and legislation. Emory University Archives in Atlanta, Ga. holds the papers

of Defense Housing coordinator Charles F. Palmer. He proposed a privately funded cooperative housing plan to the United Automobile Workers Union during World War II, but it failed to capture the union's support. Labor was interested in the publicly funded cooperative housing plan Lawrence Westbrook of the Federal Works Agency developed. Westbrook's private papers are at the Carroll Library at Baylor University in Waco, Texas.

Researchers seeking a deeper understanding of the role architects played in promoting cooperative home ownership may wish to consult the University of California at Los Angeles for the Richard J. Neutra Papers, the University

of Wyoming's holdings of the papers of architect Oscar Stonorov and the University of Louisiana at Lafayette where the papers of architect David R. Williams are held. Those seeking to understand the role labor leaders played in the promotion of cooperative housing should start at

the Reuther Library at Wayne State University in Detroit where they will find the papers of two former presidents of the United Automobile Workers Union, R.J. Thomas and Walter P. Reuther and the Philadelphia-based hosiery workers' union leader, John Edelman. John Green, the president and founder of the Industrial Union of Marine and Shipbuilding Workers of America whose papers are part of the union's collection at the University of Maryland, favored cooperative home ownership for industrial workers because home ownership was too economically risky.

A great deal of cooperative housing's history is buried in the records and files accumulated by leading reformers such as Bauer, whose papers are available to researchers at the Bancroft Library at the University of California at Berkeley. Cornell University's Olin Library houses the papers of Charles Abrams, the attorney and Civil Rights advocate who was a supporter of cooperative housing.

Cooperative Housing History in Progress

Lasner is now writing a book on a group of well-known architects based in the San Francisco Bay Area who advanced the design of housing and neighborhoods across the United States between the 1940s and the 1990s. He indicated that while not all the communities the architects designed

The presidential libraries also hold the papers of key members of the administration, so researchers should check to see if any were involved in cooperative housing.



John and Anne Green and baby son, John walk from their home to the annual community July Fourth celebration at Audubon Village (now Park) in New Jersey. Green, the founder and president of the Industrial Union of Marine and Shipbuilding Workers of America, advised President Franklin D. Roosevelt on housing, labor and shipbuilding matters during WWII. He spent the remainder of his life at Audubon Park. Alice Green Minion Collection

were cooperatives, several, including Pomeroy Green in Santa Clara, Calif., Laguna Heights in San Francisco and Bannockburn, Md., were organized as cooperatives. Since trade journals covered the work by these architects and because they often wrote about their work, their papers are now housed in university archives. Lasner stated his research process has been somewhat different than usual. Architect Claude Oakland, whose papers are housed at the University of California, Berkeley, designed Pomeroy Green and Laguna Heights where Lasner spent several summers working. Vernon DeMars, whose papers are also housed at Berkeley, designed Bannockburn. Additionally, a former director of the complex who grew up there and whose parents were among the original cooperators was looking for help placing the community's archive in a library contacted Lasner. He worked with her to donate the material to American

University, which has now processed the collection and made it available to researchers (Note: Thank you to Lasner and the donor for their efforts to document U.S. cooperative housing history).

Tanaka gave a paper based on his doctoral dissertation research at the Eighth Biennial Meeting of the Urban History Association in Chicago in October 2016. He is writing a broad historical survey analyzing the development of "large-scale, middle-income housing development in postwar New York." It will investigate the "many different facets of the postwar, middle-income market, from life insurance housing projects to FHA-insured multifamily rentals to entirely private ventures built to compete with the suburban market."

The Tanaka dissertation will explore "the social, political and economic factors that contributed to a building boom of 'middle-class projects' in New York City from the 1940s through the 1970s." It will ask why New York followed "this unusual trajectory in the era of mass suburbanization and who benefited from the anchoring of blue- and white-collar workers to the urban core?" This large-scale approach to urban development came "to an abrupt end in the mid-1970s" in the context of "rising costs, increased political resistance, and dramatic demographic changes."

Tanaka regards the dissertation chapter that looks at the "rise and fall of the nonprofit cooperative housing movement, which represented a powerful alliance between labor organizations and the state and local government to anchor the city's labor force to the five boroughs" as one of the most "intriguing." He found that "labor-affiliated developers such as the United Housing Foundation and the Association for Middle Income Housing" were part of a "development coalition" that "reached its peak under the labor-backed mayoralty of Robert F. Wagner, Jr. and the governorship of Nelson Rockefeller in the late 1950s and 1960s. These groups were often the "first to take advantage of newly-established government programs, leading to iconic projects such as Morningside Gardens in Manhattan, Rochdale Village in Queens, and Co-op City in the Bronx."

"While the nonprofit cooperative movement envisioned itself as something of a 'third sector,' independent from both business and government, as projects grew in scale, they became increasingly dependent on government loans, which were in turn borrowed from private investors." Tanaka found that the residents "came to see themselves increasingly as tenants, instead of owners, in the true cooperative sense."

Vietnam-era inflation, local fiscal crisis and suburban dislocation in the 1970s took their toll on the economic viability of nonprofit cooperatives, culminating in the Co-op City rent strike in 1975, a political and financial fiasco that brought a dramatic end to the large-scale cooperative movement.”

During the research for “The Mutual Housing Experiment,” the author found that during the administration of President Nixon, another experimental housing program was launched that had the same number of model communities, was also aimed at middle-income households, featured the latest in factory-built housing and was earmarked for sale to housing cooperatives and other non-profit housing groups. Announced in 1969, Operation Breakthrough was

the brainchild of HUD Secretary George Romney. Only one of the eight original Operation Breakthrough communities is still owned by a cooperative today. The tentative title of the book the author is now working on is “Operation Breakthrough, George Romney, and the Unrealized Promise of the Factory-Built House.”

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THE RCM PROGRAM



The Registered Cooperative Managers (RCM) Program builds upon the work of cooperative housing management and helps the profession achieve ever-increasing higher professional standards, expectations, and rewards. The designation is awarded to managers who meet the RCM standards of excellence, understanding, and achievement in the area of cooperative housing management following participation in a series of courses, then pass certification exams. RCM course topics provide exciting insight into housing cooperatives and help develop skills necessary for a successful career in management. The courses refine the understanding of housing cooperatives, renewed dedication to the principles of cooperative housing, codify the ethics of cooperative housing management, and improve housing management practices.

The Registered Cooperative Manager Certification Program is the only nationally-recognized designation and certification specializing in Cooperative Management recognized by the Registered in Apartment Managers (RAM program). RCM is a sought-after professional designation for cooperative housing managers. You can find the application and more information on www.coophousing.org.

Thurgood Marshall – From Cooperative Apartment to Supreme Court

by David J. Thompson

More than anyone else in America, Thurgood Marshall, former associate justice of the U.S. Supreme Court, fought racial discrimination daily. Yet while he fought successfully to open doors for everyone else, he himself faced the closed doors of housing for decades. His work at the National Association for the Advancement of Colored People (NAACP) opened the nation's school doors to students of any color and jobs to any race, yet Marshall was almost 60 years old before the laws in the United States were changed to allow his family to own a home anywhere he liked. Fortunately, Morningside Gardens, a cooperative in New York City, opened its doors to Marshall when most other doors were still shut.

What changed Marshall's world was the vibrant Harlem he moved to in 1936. Spurred by the Harlem Renaissance, the Manhattan neighborhood had become the 'Black Capital' of the United States. Although much of the excitement in Harlem was in culture, there was also interest in "black economics." The most talked about efforts in this regard were those of Marcus Garvey and black "nationalism." At the other end of the spectrum were the writings of W. E. B. DuBois. In his 1903 book, "The Souls of Black People," DuBois espoused cooperatives as the way forward for blacks to have a place in the economy. Indeed, from the 1920s through the 1950s, Harlem was the center of black cooperative activity in the nation. However, readers need to be reminded of the times. In 1936 there was only one black member of Congress, Arthur Mitchell, an Illinois Democrat.

At one of the epicenters of the cooperative movement in Harlem was a housing cooperative called the Dunbar Apartments. It was named after the black poet, Paul Lawrence Dunbar. Filling an entire city block, this 511-unit housing cooperative was funded by John D. Rockefeller, Jr. as the first black housing cooperative in the country. When it opened in 1928, on the eve of the Great Depression, the Dunbar was one of the first home ownership opportunity for

blacks in New York City. If the members paid the carrying charges for 22 years, they would own their shares outright. Those who lived at the Dunbar were a virtual Who's Who of Black America: Countee Cullen, DuBois, Matthew Henson, Langston Hughes, A. Philip Randolph, Paul Robeson, Bill "Bojangles" Robinson and others.

Regretfully, over the next several years, the economic collapse caused by the Great Depression brought a drastic end to the dream. Most of the cooperative members of the Dunbar could not keep up with their payments, and the cooperative could not meet its monthly mortgage payment. In 1936, Rockefeller foreclosed on the cooperative. The cooperative's shareholders were given back their share funds, and they returned to being renters.

Later that year, when Marshall arrived in New York City, there were limited home ownership opportunities; moreover, only certain rentals in specific areas were available to blacks. One opportunity for blacks was Garrison Apartments, a 29-unit building on Convent Avenue and 149th Street. It became a cooperative in 1929, made it through the Depression and still is a co-op today.

At the height of his career, some might have said that Marshall had almost everything. His work as lead counsel for the NAACP had broken the back of public school segregation in America, and from 1940-1961, he won 29 out of 32 civil rights cases. His legal victory at the U.S. Supreme Court in the landmark case of *Brown v. Board of Education* radically changed racial practices in America. His appointment as an associate justice of the United States Supreme Court was the first for a black American. He had achieved a comfortable income, and his standing as a great American jurist was secure in history.

Yet that was not how life started for the young Marshall of Baltimore, Md. In 1930, he had gone to Howard University Law School in Washington, D.C. to get his law degree and

Morningside Gardens, a cooperative in New York City, opened its doors to Marshall when most other doors were still shut.



PHOTOGRAPH BY JIM HENDERSON

The Black White House in Harlem Goes from Rental to Cooperative

By David Thompson

During the 1930s to the 50s, the 13-story high classic apartment building at 409 Edgecombe Avenue in Harlem, NYC was known as “The Black White House.” It was one of the most attractive buildings in Harlem where blacks could rent. Among its famous mix of residents at one time or other were Walter White (first head of NAACP) and later, Roy Wilkins (second head of the NAACP), Thurgood Marshall (NAACP lawyer and Supreme Court associate justice) and his first wife Buster, William Stanley Brathwaite (poet), Elizabeth Catlett (artist and sculptor), Aaron Douglas (father of black art in America) and Clarence Cameron White (violinist and composer).

In the 1960s, The Edgecombe went into decline, and the city took it over in 1979 for back taxes. In 1995, the city sold Edgecombe to the residents as a housing cooperative. To maintain affordability, it is a housing cooperative that operates according to the strict income and resale regulations of the Housing Development Fund Corporation (HDFC). The National Cooperative Bank is the exclusive share lender. Due to its place in black American history, the Edgecombe has now been designated as a city landmark. How wonderful that today a cooperative is the former home of many American black heroes.

had taken an interest in civil rights cases. He graduated in 1933 top of his class.

Howard, at the time, was a center of black interest in cooperatives of many types. In fact, faculty, students and staff cooperatively owned and operated the Howard University Cooperative Bookstore. Without a doubt, Marshall would have been a member, and this bookstore would be his first cooperative. Just a few blocks away, in 1950, some of the faculty set up their own housing cooperative. It was the only way they could own property in that part of Washington. The 1415 Girard Street NW Cooperative Association is a 20-unit apartment building which 60 years later continues as a housing cooperative.

Charles Houston, the vice dean of Howard’s School of Law, had taken Marshall under his wing. In 1933, Marshall graduated, becoming a private practice lawyer who often took cases on behalf of the local NAACP.

In October 1936, Marshall was asked to come to New York City to be the assistant to Houston, the new chief legal counsel for the NAACP. The salary of \$2,400 a year was more stable than Marshall’s private practice in Baltimore and the civil rights cases he had mostly been litigating for free would now be paid work.

Marshall gave up his practice and left his parents and brother in Baltimore. He moved with his wife, Vivian (nicknamed “Buster”) to live with an aunt and uncle in a small rented apartment in Harlem. Marshall was 38. In 1938, Houston left the NAACP, and Marshall took his place. Marshall’s salary went up \$200 dollars a month.

In the 1940s, Marshall and Buster moved into their own rental apartment, The Edgecombe at 409 Edgecombe Avenue, just south of 155th Street in Harlem. Built in 1917, it was where some of Harlem’s black elite rented. How Harlem had changed - the 1925 census showed all the Edgecombe renters were white. One of the first blacks to move into The Edgecombe in 1929 was Walter Francis White. White led the NAACP until he died at The Edgecombe in 1955. While White lived there, the Edgecombe was called the “White House of Black America.” Later renters at The Edgecombe were DuBois, a co-founder of the NAACP, and Roy Wilkins, who was appointed as executive secretary of the NAACP in 1955.

Marvel Cooke, Du Bois’ assistant, lived there from 1932. Cooke said, “... no building in the white areas of Manhattan would rent to a black New Yorker.” Marshall was renting at The Edgecombe in 1954, when he won *Brown vs. Board*

of Education. When Morningside Gardens opened in 1958, Marshall and his second wife moved there from The Edgecombe. To complete the cooperative story, The Edgecombe Apartments converted from a rental to an income restricted cooperative in the 1990s.

It was in 1938, that the second cooperative came into Marshall's life. He and his wife Buster were not able to make ends meet on his NAACP income and her secretarial work. So, both worked at night and on weekends in the store and delivered groceries to members of the consumer cooperative market they had joined. While it is not known which cooperative, they held a membership, there are two possibilities and the first and most likely was the Young Negroes Cooperative League (YNCL). Unfortunately, we only know this piece of the Marshall's cooperative activity through released FBI records in an interview with an unnamed source:

On September 13, 1961, redacted, NAACP redacted, advised SA redacted, that he first met THURGOOD MARSHALL as a social friend in 1940. He said that at the time, Mr. MARSHALL's first wife, now deceased, himself, and several others were engaged in the operation of a cooperative grocery store in the Washington Heights section of New York and that Mr. Marshall had occasionally helped with the delivery of groceries" (FBI Files NY 77-26395).

George Schuyler founded the YNCL in 1930. Schuyler had helped develop a series of food cooperative stores and buying clubs throughout the nation with the headquarters for these cooperatives in Harlem. Schuyler had even studied cooperatives for six months in England in 1931 and visited Rochdale, England, to learn about the first consumer cooperative store, founded in 1844 and located on the now historic Toad Lane.

The Executive Director of the YNCL was Ella Baker, one of the most prodigious promoters of cooperatives among blacks. Baker travelled around the United States, particularly in black communities, promulgating and organizing mainly consumer cooperatives. Baker attended many conferences and workshops sponsored then by the Cooperative League of the USA (CLUSA) now called the National Cooperative Business Association CLUSA.

The other possibility was that the Marshalls were members of Harlem's Own Cooperative on 136th Street. This cooperative

grew out of a buying club started by members of the Dunbar Apartments. Baker was also publicity director for Harlem's Own Cooperative.

In 1940, Baker joined Marshall as a staff member of the NAACP. Baker became one of the great organizers of blacks in the United States and much of her foundation for organizing was learned while working with consumer cooperatives in Harlem. Baker went on from the NAACP to be one of the first staff members in the Southern Christian Leadership Conference (SCLC) and later one of the initiators and early staff members of SNCC (Southern Nonviolent Coordinating Committee). Both organizations played a central role in voicing the needs of blacks in America. Throughout her career, Baker was always a champion of grassroots movements, cooperatives and economic democracy.

With Baker joining Marshall at the NAACP in 1940, the organization published information about consumer cooperatives. During that era, the NAACP actively promoted cooperatives, economic democracy and the role of consumer power in the marketplace. Baker and Marshall worked alongside each other at the national office of the NAACP from 1940-1946 and through the 1950s while Baker was chair of the NYC branch of the NAACP. They continued working together in wider venues for many decades.

When it came to his own work with cooperatives, the place where Marshall made the most impact was on the effort to develop interracial cooperatives at the end of the Second World War. When the war ended, numerous groups, ranging from churches to veteran organizations, were intent on creating interracial cooperatives. As they reasoned, if they had fought a war and faced death together, why could they not live together?

Alas, racial restrictive covenants like "red-lining" (the practice of banks not offering mortgages in black neighborhoods) and targeted use of insurance funds by the Federal Housing Authority (FHA) prevented this new idea from taking hold. For example, in 1940 the Federal Housing Administration (FHA) proposed the following covenant be used in a real estate contract. "No person of any race other than _____ (to be filled in by real estate companies) shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant."

Throughout the United States, the FHA turned down every attempt to create an interracial housing cooperative. Whether it was York Center Cooperative, Illinois, Usonia in New York State, Community Homes and Mutual Housing Association in Los Angeles, Sunnyhills in Milpitas or Ladera in Palo Alto, the FHA fabricated various excuses to turn down interracial cooperatives. The FHA's unspoken opposition was that allowing blacks to live in a cooperative would impact the marketability of the other units and lower the value, thereby harming the FHA's collateral. Marshall and others knew they had to contend with the institutional racism of the FHA.

One of these planned, post-war interracial cooperatives was York Center Cooperative in Du Page County, Ill. Conceived by a group of religious and progressive families in 1945, York Center bought 100 acres to turn into a land cooperative for 79 homes. Although a cooperative member would own a home, 72 members would jointly own the underlying land and improvements. The *Chicago Tribune* reported, "Members learned to tout the 100 acres of communally-owned property as an economically mixed society that was tolerant of all races, religions and ethnicities."

To create legal documents that would spell out and confirm the intent of their cooperative community, the original board sought a pro-bono lawyer. They were fortunate to get the help of Ted Robinson, an attorney who worked in Chicago for the Illinois Department of Labor. Robinson spent over two years working through the articles, bylaws, membership documents, deeds and model leases, all based on one-member-one-vote and open membership.

At the conclusion of his work, Robinson decided he, too, should apply to join the cooperative. The problem was that Robinson was black and his wife was Jewish and their children of mixed race. Many of the cooperative members said they would leave if Robinson's family was allowed to join. Robinson withdrew his application, not wanting the cooperative to come to an end due to his application. Many members felt, however, that if their intent was truly to have "open membership" that meant everyone, which surely included Robinson and his interracial family. The Robinsons were then approved for membership, and some members did leave the cooperative.

The York Center Community Cooperative then moved to the next phase, which was to obtain financing for their commu-

nity. About 1947, the FHA turned down their application, owing, the agency said, to blight and unpaved roads, etc. As in the other cases, the reality was that the FHA would not finance an interracial cooperative.

The York Community Cooperative then decided to fight the FHA's decision. To do so, the cooperative asked Marshall and the NAACP to take up their case, and they agreed.

Fortunately, Marshall had done extensive work on discrimination and civil rights with many departments of the U.S. government, especially the military during and after World War II.

In the end, Marshall's personally written, 21-page memorandum from the NAACP to President Harry Truman made its way to the president's desk. The first two examples of FHA discrimination Marshall mentioned in the memo are both inter-racial cooperatives. The first is Community Homes in Reseda, Calif., and the second is York Center Community Cooperative. The first folded under the economic costs of the delay and refusal; the second did succeed but only with changes.

The FHA had written to Community Homes, Inc., the following memo (July 3, 1947):

This administration does not use the mortgage insurance system either to promote or to discourage any proposal on the grounds that it involves interracial characteristics. Such aspects of a proposed transaction are given the same consideration as all other characteristics, such as transportation, taxes, community facilities, livability, and design of structure. If the study of any of these points indicates probable adverse effects upon market acceptance to a degree significantly increasing the risk, we are not warranted in accepting the risk, regardless of the nature of the cause producing that effect.

Within his memo to Truman, Marshall added:

Housing in our society today is more than a shelter. It includes the whole environment in which the home is maintained. A well-built house in a poorly planned, impoverished, slum area, without adequate schools, community facilities, etc., does not provide good housing. Nor does a well-built house in a ghetto provide good housing in a democratic society.

The [Federal Housing Administration] has recognized that good neighborhoods are an integral part of good housing, but it has equated “good neighborhood” with a “racially homogenous” neighborhood. Any such concept can only frustrate the most important objective of the National Housing Act—which is to provide for Americans a healthful home environment, both physically and psychologically, in which they will develop into democratic citizens.

On the subject of FHA’s racism, Marshall concluded: “The achievement of racial residential segregation is the purpose and the effect of FHA’s policy.”

Marshall attached to his memo only one item. It was a sworn three-page 1949 affidavit by Herman Will, a board member of the York Center Community Cooperative. The affidavit outlined all the efforts the cooperative had undertaken to get FHA approval of their proposed interracial community.

Will testified in the final paragraph.

To this, the FHA agents responded that they saw no responsibility for a social policy and that they were just a business organization and the cold facts and the elements of risk were the only things that they could consider. “Under the circumstances an interracial community as a bad risk they could not insure.”

So blacks could get FHA insurance for the purchase of their homes but only if those homes were in a black area.

Truman, who famously said, “The buck stops here,” reviewed the memo from Marshall and knew that the time had come to stop discrimination, at least in government financing. In February 1949, Truman issued an executive order declaring such housing finance discrimination illegal.

Archivist Dennis Bilge of the Truman Library in Independence, Mo., stated, “It is probably true that the York Center Cooperative was, if not the first, one of the very earliest integrated housing in the United States.” Although the Executive Order was signed in 1949, it took a few more years before the stubborn FHA bureaucracy relented and actually financed an interracial cooperative.

The work of Marshall on behalf of the interracial goals of the York Center Community Cooperative was another step forward for integration in America. Little did Marshall

know that his efforts to help one interracial cooperative would six years later lead him to his own cooperative opportunity in Morningside Gardens. This experience influenced Marshall greatly.

During this period Marshall pursued a legal victory of immense proportion. On May 3, 1948, the Supreme Court unanimously ruled that racially restrictive covenants were legally unenforceable. Marshall had led the efforts to place before the Court, NAACP’s *Shelley v Kraemer* and *McGee v Sipes*. By acting, the Court put an end to the practice of racially restrictive property covenants that prevented African Americans and other minorities from owning or renting real estate in white communities.

After the victory, Marshall credited a large team of lawyers with helping craft arguments and writing the briefs. In particular, he praised the immense body of work that Loren

Miller, an attorney in California, had contributed to the victory. Alongside Marshall, Miller had argued two of the housing cases in the Supreme Court. Miller won hundreds of housing discrimination cases in California. Loren Miller Homes, a housing cooperative in San Francisco was named to honor his

fight against housing segregation.

The Supreme Court vote to outlaw racially restrictive covenants was one of the most historic actions of the Court. For the nine-member Supreme Court, the May, 1948 vote was declared as unanimous 6 to zero. Three of the justices—Justices Stanley Reed, Robert Jackson and Wiley Rutledge—had to recuse themselves as they lived in homes that had racially restrictive covenants on them.

In 1917, the Supreme Court had outlawed local ordinances to restrict the occupancy of property because of race or color. In its place began the insidious practice of individual private restrictive covenants. It regretfully took 31 additional years for the NAACP to get the Court to rule on private restrictive covenants that had achieved the same segregation patterns.

However, residential segregation was not over yet by any means. The post-war world starved for housing brought about the birth of the suburb. And the king of all suburbs was Levittown. The first Levittown, built in Nassau County on Long Island in New York State was an “overnight” town of 17,447 homes. The mass-produced pre-fab homes with extreme

The Supreme Court vote to outlaw racially restrictive covenants was one of the most historic actions of the Court.

standardization, mass purchase of supplies and cut-throat labor input brought down costs while increasing profits. At its peak, Levittown was completing 36 houses a day.

Levittown was entirely funded by loans guaranteed by either FHA or for veterans, the Veterans Administration (VA). To get a home in Levittown was easy; it required no down payment, and the payments were \$60 per month. In many cases home ownership in Levittown was cheaper than renting. Over 50,000 people moved into Levittown as soon as the homes were built. The United States was amazed at the sight and size of the instant suburb. Levittown became an instant news phenomenon and was headlined as a housing breakthrough in major papers and magazines of the times. Levittown was top of the housing hit parade. Or was it?

Eugene Burnett was one person not pleased with Levittown. During the winter of 1949-50, he and his wife had been trying to buy a home in Levittown. He had camped out overnight with hundreds of others to get on the waiting list. He was a GI, eligible for the VA loan guarantee. Yet when he got to the front of the line, he was turned away. Burnett was black. Burnett recounted a salesperson telling him, "It's not me, but the owners of this development have not as yet decided to sell these homes to Negroes." The developers never did.

Burnett was one of a million black veterans eligible for the VA loan guarantee, but in this and many other cases, he, like many black veterans, was prevented from using it. The FHA was still successfully playing its segregation game. For Burnett, the GI, it was a long ride home back to Harlem. All was not lost for everyone who fought in World War II; even a former German U Boat sailor got a home in Levittown. Of the over 50,000 people who moved into Levittown not one was black. Of Levittown's 1990 population of 53,226, only 137 were black (0.26%). As Marshall had said, "Housing is the most pernicious form of racism."

And yet, all over the country, several housing cooperatives were attempting to create integrated communities but being stopped by the FHA. The pre- and post-war efforts of Marshall and the NAACP would put an end to government-sponsored and -financed segregation. The NAACP's Supreme Court victory through *Shelley v Kraemer*, Marshall's memo to Truman, Truman's Executive Order and the pressure on the FHA all combined to begin the end legally but not in reality.

In a letter dated December 7, 1949 to Commissioner Richards of the FHA, Marshall chides Richards for lack of

action (Levittown was upmost in Marshall's mind). In doing so Marshall included in his letter an excerpt from President Truman's address to the NAACP Annual Convention in 1947:

Our case for democracy should be as strong as we can make it. It should rest on practical evidence that we have been able to put our own house in order.

For these compelling reasons, we can no longer afford the luxury of a leisurely attack upon prejudice and discrimination. There is much that state and local governments can do in providing positive safeguards for civil rights. But we cannot, any longer, await the growth of a will to action in the slowest state or the most backward community.

Our national government must show the way.

But the FHA went on stymieing everyone, even President Truman.

Sadly, Buster Marshall was diagnosed with terminal lung cancer in 1954 and died soon afterwards at the young age of 44. The Marshalls had been married 25 years. Although they had wanted children, they had not been successful. Now alone, Marshall threw himself into his work, specifically, the reprise of the *Brown v Education* case in the Little Rock 9 (often called Brown 2).

On December 1, 1955, Rosa Parks (Montgomery's NAACP Chapter Secretary) remained seated on a Montgomery bus, and the NAACP was once again appealed to Marshall for help. Marshall, who was to be married December 17 of that year, asked Robert Carter in his office to take on the case. Since the death of his first wife, Marshall had fallen in love with Cecilia (Cissy) Suyat, a secretary of Hawaiian and Filipino descent, who worked at the NAACP headquarters.

During all his years in New York City, Marshall had rented an apartment. Because of restrictive racial covenants in New York City, it was almost impossible for blacks to buy homes, even if they had the money. Marshall was now in a more difficult predicament. Having only anticipated restricting black and white couples, the covenants were even more complex about interracial couples. In this case, the Marshalls were an interracial black and Asian-Hawaiian couple. Home ownership in New York City was hardly possible for the Marshalls.

Through his legal efforts, Marshall had opened the door for children of all races to go to school in America, but in 1955, he and his wife could not open a door for home ownership.

Another door was, however, about to open. It was the welcoming door of a new housing cooperative.

About that time, Morningside Gardens was developed as a limited-equity housing cooperative on the Upper West Side. It was one of the earliest owner-occupied interracial housing cooperatives in Manhattan. It played a role in initiating the creation of the Mitchell Lama Law, which led to the development of many similar housing cooperatives throughout New York City. Being close to Columbia University, Barnard College and numerous other academic and theological institutions, Morningside Gardens was a welcome affordable housing addition to the Morningside Heights neighborhood. The intent of the initial board of directors, led by Columbia President Grayson Kirk and the philanthropist David Rockefeller, was to create an interracial, middle-class multi-family community as a model for others in New York City.

When Morningside Gardens opened in 1957, the racial makeup of the cooperative members was 75 percent white, 20 percent black, 4 percent Asian and 1 percent Puerto Rican. As a model of interracial housing, it was thought at the time that the percentage of blacks and Puerto Ricans should be no more than 25 percent. But most importantly for the Marshalls, Morningside Gardens was open to blacks and interracial couples.

In fact, the Morningside Gardens' cooperative organizers recruited the Marshalls to become members of the cooperative knowing of their inability to get home ownership in any other way in Manhattan. Thurgood and Cissy Marshall and their first son, Thurgood Jr. (born in 1956) moved into Morningside Gardens in the spring of 1958. They were the first occupants of the new apartment and excited because Cissy was again pregnant. In July of 1958, the Marshalls' welcomed their second son, John. He might have been the first child born at Morningside Gardens. The cooperative ownership and residency couldn't have come at a better time for the Marshalls. Being received into the cooperative meant obtaining a home in which to safely bring up their two young children. Morningside Gardens, with its 980 units in six, 21-story buildings, became an interracial neighborhood that was secure and friendly. The site covers 10 acres that were beautifully laid out with significant open space and many facilities. The cooperative community of 3,500 people became a social and economic model for what New York City could be.

The Marshall's new home was an apartment on the 17th floor in Morningside Gardens. It would be their home for nearly 10 years. Their investment in a cooperative share was \$2,500, and their monthly carrying charges were \$21 per room. The October 1958 issue of the Morningside Gardens News reported: "One of our most active members is Mr. Thurgood Marshall, Building VI, who serves as a full-time lawyer for the NAACP. Mr. Marshall has pleaded many cases before the Supreme Court, most of which he has won."

As a Morningside Gardens neighbor of the Marshalls recalled, "We had a Fourth of July party here and Thurgood and Cissy had over Alex Haley, Daisy Bates (champion of the Little Rock 9) and Lena Horne."

But Marshall was not the favorite of every black activist in New York City. In July of 1959, rumors spread in New York that a white policeman had beaten a black woman. Malcolm X supporters called for demonstrations on the street. The city's white police commissioner, Stephen Kennedy asked Marshall to investigate the circumstances. Marshall found out the reverse that the woman was not black and she had attacked the police officer who was now in hospital. Marshall proclaimed to the public that the rumor was untrue. In retaliation, Malcolm X personally attacked Marshall. Malcolm X and Marshall had a very low regard for each other and made it known publicly. During this period, some followers of Malcolm X took it upon themselves to taunt Marshall on his way home or stand in his path.

Commissioner Kennedy became so concerned for Marshall's personal safety that one night Kennedy knocked on Marshall's apartment door to give him a revolver for self-defense. Cissy put her foot down. She did not want a gun in the apartment around two young children. Marshall thanked Kennedy but refused the gun. For the next few years, Commissioner Kennedy made sure that the local police were frequently posted near his building at Morningside Gardens to watch over Marshall.

The Marshalls might have stayed at Morningside Gardens for the rest of their lives. However, in 1965, Marshall made his way from their cooperative apartment to the White House for a momentous meeting with President Lyndon Johnson. Following that meeting, in August, President Johnson appointed Marshall to be the first black U.S. Solicitor General. Marshall had decided he preferred for his family to remain living at the cooperative, and he would commute weekly to D.C.

At the swearing in ceremony, Johnson learned about Marshall's intent to commute. Johnson told Marshall privately to move his family down. Soon after, the Marshall family moved from their cooperative to a rented house at 64A G Street in southwest D.C.

In 1967, the Commonwealth of Virginia removed all racial covenants, and shortly after, the Marshalls moved into a single-family home in Lake Barcroft, Fairfax County, Va. For the 1,000 white families living in the community, the Marshalls were the first black residents.

At 60 years of age and now an associate justice of the Supreme Court, Marshall was finally able to own his first single family home. Yet, a decade earlier, Morningside Gardens, a housing cooperative designed as a model for interracial living in New York City, had, in fact, been the first door in America opened to his family for home ownership.

In later years, Morningside Gardens named their community center on La Salle Street the Thurgood Marshall Room. Many of the cooperative's member events take place there. It is a fitting tribute to a man who was given his first opportunity to own his home by a cooperative and who in turn among a range of humanistic victories helped interracial housing cooperatives build a better America open to all races.

Thurgood Marshall, "Memorandum to the President of the United States Concerning Racial Discrimination by the Federal Housing Administration," National Association for the Advancement of Colored People (Library of Congress Manuscript Collections), February 1, 1949.

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David J. Thompson, president of Twin Pines Cooperative Foundation, has written a book about the role of cooperatives in the Civil Rights Movement. This article is excerpted from a chapter about Thurgood Marshall and cooperatives.

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