The Journal of Business, Entrepreneurship & the Law

Volume 5 | Issue 2 Article 7

5-15-2012

America's Favorite Illiquid Investment: An Examination of the Changing Social Perception of Homeownership

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AMERICA'S FAVORITE ILLIQUID INVESTMENT: AN EXAMINATION OF THE CHANGING SOCIAL PERCEPTION OF HOMEOWNERSHIP

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ABSTRACT

Purchasing a home is traditionally touted as one of the best investments an individual can make, but this advice may be simply too generic to be useful or applied too broadly to be good counsel. Social pressures encouraging homeownership in America have been fostered by decades of government programs. Modern uses of the family home as a financial investment, such as flipping homes or using a home equity line of credit to subsidize a higher standard of living, illustrate a perceptual shift in which many modern homeowners have come to consider the family home principally a tool for financial gain rather than a stable place of residence. This article will explore the benefits traditionally attributed to homeownership, consider whether these benefits add value to modern homeowners, discus how this type of illiquid investment may be inappropriate for many aspiring homeowners, and will present paths forward in reshaping the American perception of homeownership.

I. INTRODUCTION

Purchasing a home is traditionally touted as one of the best investments an individual can make. This advice may be simply too generic to be useful, or applied too broadly to be good counsel. Social pressures encouraging homeownership have been fostered by decades of government programs and serve to induce many potential home purchasers to "seal-the-deal" without sufficiently scrutinizing or understanding their decision. A home is both a place to live and a financial investment. While providing a physical place of residence has traditionally been the primary function of owning a home, practices such as flipping homes or using a home equity line of credit to subsidize a higher standard of living illustrate a perceptual shift in which many modern homeowners have come to consider the family home as principally a tool for financial investment. It has been famously articulated that the home is part of "the way we constitute ourselves as continuing personal entities in the world."[1] If homeownership represents such an integral element of American identity, is there any way for post-mortgage crisis homeowners to regain a healthy relationship with the family home first as a residence and second as an investment?

Imagine you are a young working professional with a spouse and a small child and you are renting a nice apartment not too far from your job. Your co-workers all own their homes and, along with your friends and family, they argue that for you to continue to rent your house is just like throwing away money each month. These voices all seem to say owning a home is the next step in your American dream and is essential to providing stability for your family. They assert the tax savings of purchasing a home will make the actual cost of the home the same as renting and that homeownership is always a great investment for the future as it can appreciate while you build equity. You decide to explore owning a home and after a real estate agent helps find you a great deal, you obtain a loan that promises monthly payments only slightly more than your current rent. The loan officer explains how, in a few years, the adjustable interest rate will change, but dismisses your concerns by asserting you will likely have received a few promotions at work before that time. Your excitement at getting the keys to your new home is palpable. You pop open a bottle of champagne to celebrate the important life step and officially move into your new home.

This narrative could continue with tales of costly home repairs, noisy neighbors, damaging termites, and scraping to make the increased monthly payments while wondering when that tax savings everyone was talking about will start to feel like a meaningful benefit. The story could alternatively unfold to reveal a wonderfully stable environment in which the young couple raises a family, forms lifelong friendships among the neighborhood community, and enjoys low

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[1] Rachel D. Godsil, *Protecting Status: The Mortgage Crisis, Eminent Domain, and the Ethic of Homeownership*, 77 FORDHAM L. REV. 949, 954 (2008) (citing Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982)).

crime rates in the surrounding area. The regional housing market could increase and provide massive equity gains for the young couple, or the story could be told with a falling market that leaves the family financially chained to a home worth less than their debt. Regardless of the future one might envision for the young family, the family is connected to the home. They are connected to the other people in the neighborhood, linked to the regional housing market, benefited or troubled by the structural condition of the house, and bound by the terms of the loan agreement bearing their signature. All these new relationships accompany the house. The young family will receive the benefits and challenges of the purchase whether buying this particular home was a good idea and whether they fully understood the ramifications of their purchase.

Buying a house has come to embody many different meanings in American culture, especially in the recent years of dramatically shifting housing markets. A few aspects of homeownership that seem to be the most consistent and noteworthy include the notion that homeownership allows benefits from establishing a long-term residence, taking on significant debt to fund a long-term financial investment, and an increase in social status.

This article will explore the benefits traditionally attributed to homeownership, consider whether these benefits add value to modern homeowners, and present paths forward in reshaping the American perception of homeownership. To this end, Part II of this article will first consider the historical social engineering and ongoing policy decisions that have fostered the American ideal of homeownership and have worked to increase the ability of many to purchase a home. Next, it will examine the social as well as financial benefits, costs, and risks associated with purchasing a home. Part III will discuss the concept of illiquid investments to consider how locking-up a significant portion of a homeowner's current and future cash flows may present an inappropriate style of investment for many aspiring homeowners. In Part IV, this article will explore the modern uses of the family home as a financial asset and consider how modern homeowners have come to perceive the debt associated with purchasing a home. Finally, two of the proposed structural changes to the housing and mortgage finance industries will be examined, and an argument for affordability will be offered as a means of reclaiming the benefits of homeownership and generating a healthy perspective on debt for aspiring homeowners.

II. TRADITIONAL TENANTS OF HOMEOWNERSHIP

A. Historical Development

The modern ideal of homeownership in the United States was present at the birth of the country and has been reinforced consistently throughout its development.[2] Property ownership at one time was a requirement for voting in the early United States and followed the now roundly rejected assumption that

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[2] Kristen David Adams, *Homeownership: American Dream or Illusion of Empowerment?*, 60 S.C. L. REV. 573, 574–75 (2009).

property owners were of greater worth than those residing on the land of another.[3] Professor Kristen Adams of Stetson University gives voice to the American sentiment that, "homeownership is our national ideal, and we expect renters to strive for ownership."[4] She tracks comments by United States Presidents Calvin Coolidge, Herbert Hoover, Franklin D. Roosevelt, Bill Clinton, and George W. Bush in support of the belief that increased homeownership rates provide a benefit to society.[5] The American ideal of land ownership was spurred on after the American Civil War and through the 1960s by the Homestead Act, which functioned to distribute 287.5 million acres of public land for private ownership.[6] Pop culture expressions of the quintessentially American ideal of land ownership during the turn of the century are well illustrated through media productions such as the 1992 Ron Howard film FAR AND AWAY.[7]

Since the Great Depression, the United States Government has taken an active role in encouraging homeownership through programs that provide direct financial assistance to those seeking to own a home, and through the development of the foundations of the modern mortgage finance markets.[8] Entities, such as the Department of Veterans Affairs (VA) and the Federal Housing Administration (FHA), began guaranteeing the value of homes used as collateral for private loans in the 1930s,[9] while the Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac) worked to ensure home loan services were offered to ever broadening sections of the loan recipient market.[10] Fannie Mae and Freddie Mac are together referred to as Government Sponsored Enterprises (GSEs) and have been the primary tools of policy makers for empowering middle-income and low-income wage earners to attain the financing required to become homeowners.[11]

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[3] Godsil, *supra* note 1, at 955 ("The assumption that property owners have greater worth than those without has a long vintage—and underlies many societies' (including early American) property requirements for voting. In support of the link between property and the right to vote, John Adams argued, 'Is it not equally true, that Men in general in every Society, who are wholly destitute of Property, are also too little acquainted with public Affairs to form a right Judgment, and too dependent upon other Men to have a Will of their own? If this is a Fact, if you give to every Man, who has no Property, a Vote, will you not make a fine encouraging Provision for Corruption by your fundamental Law? Such is the Frailty of the human Heart, that very few Men, who have no Property, have any Judgment of their own. They talk and vote as they are directed by Some Man of Property, who has attached their Minds to his Interest.'").

[4] Adams, *supra* note 2, at 574 (citations omitted).

[5] *Id.* at 574–75; *see also id.* at 575 n.8 ("[C]rediting President Clinton with the 'belief that homeownership and decent housing are an essential part of the American Dream' and stating that he 'wanted to make the dream of homeownership a reality for all Americans.'").

[6] Jonathan Miner, *Note: The Mortgage Crisis in Historic Perspective: Is There Hope?*, 36 J. LEGIS. 173, 175; *see* Public Land Statistics 1998 - Volume 183 BLM/BC/ST-99/001+1165, Mar. 1999, Part 1 Land Resources and Information, U.S. DEP'T OF THE INTERIOR: BUREAU OF LAND MGMT., *available at* http://www.blm.gov/natacq/pls98/98pt1.html

[7] FAR AND AWAY (Imagine Films Entertainment & Universal Pictures 1992).

[8] Arlo Chase, *Rethinking the Homeownership Society: Rental Stability Alternative*, 18 J.L. & POL'Y 61, 64–65 (2009); *see* Godsil, *supra* note 1, at 957.

[9] Chase, *supra* note 8, at 65 (asserting that that FHA and VA homeownership loan programs, guaranteed up to 90% of the value of a home as collateral for loans from private banks).

[10] *Id.*

[11] *Id.* In 1968 and 1990 Fannie Mae and Freddie Mac respectively began offering mortgage

The GSEs were instrumental in establishing the now standard thirty-year mortgage as compared to the traditional five-year loan. The old style short-term loans ended with a balloon payment of the principal and would require a debtor to refinance the amount with a bank, or other lender, at the updated market interest rate.[12]

Through the FHA and VA, the down payment required for a purchaser to get into a home fell from around thirty-three and even fifty percent of the total house price to just ten percent and at times even lower (currently three and one-half percent for FHA loans).[13] The statutory mission of Freddie Mac is "to provide liquidity, stability and affordability to the U.S. housing [and mortgage] markets," and its asserted public mission is to expand opportunities for homeownership.[14] The GSEs function to raise money by issuing securities to the public then injecting this capital into lending markets by purchasing loans from those who approve and issue loans to the public. Thus, the GSEs hold a bundle of purchased mortgages, and the loan originators receive funds from selling mortgages to the GSEs which, in turn, enable them to issue new loans to segments of society with lower credit scores or a higher-risk of default.[15] In essence, the GSEs have worked to fund the expansion of real estate-related financial services to those who were traditionally unable to attain a loan to purchase a home.[16]

In more recent years, and with the intention of enabling lenders to further issue loans to underserved segments of society, Congress has acted to increase the required percentage of mortgages issued to low- and moderate-income borrowers that the GSEs must purchase.[17] In 2000, the GSEs announced an intention to buy $2 trillion worth of low-income and high-risk loans by 2010.[18] Further expanding access to home financing, in 2004 the GSEs increased their flexibility for underwriting guidelines and, through encouragement by President George W. Bush

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guarantees similar to those offered by the FHA and VA to a broader cross-section of Americans. *Id.*

[12] *Id.* Before the FHA, VA, and GSEs entered the mortgage industry, a borrower would generally receive a five-year interest only loan ending in a balloon payment of the principal. GRANT S. NELSON & DALE A. WHITMAN, LAND TRANSACTIONS AND FINANCE 204 (4th ed.1998). When the balloon payment approached, a borrower would either pay down all or part of the principal or secure financing for the impending balloon payment of the entire principal due for another period of five years at the present interest rate. *Id.* This process would continue until the borrower was able to completely pay off the principal. *Id.*

[13] Godsil, *supra* note 1, at 957.

[14] Georgette Chapman Phillips, *An Urban Slice of Apple Pie: Rethinking Homeownership in U.S. Cities*, 24 NOTRE DAME J.L. ETHICS & PUB. POL'Y 187, 201 (2010); s*ee Our Mission*, FREDDIE MAC.COM, http://www.freddiemac.com/corporate/company_profile/our_mission (last visited Apr. 4, 2012).

[15] *See* Lois R. Lupica, *Asset Securitization: The Unsecured Creditor's Perspective*, 76 TEX. L. REV. 595, 599–616 (1998); *see Who is Fannie Mae Today?*, FANNIEMAE.COM, http://www.fanniemae.com/kb/index?page=home&c=aboutus (last visited Apr. 4, 2012).

[16] *See* Phillips, *supra* note 14, at 201.

[17] *Id.* ("In 1992, the Federal Housing Enterprises Financial Safety and Soundness Act 100 (also known as the GSE Act) was signed, increasing the requirements for Fannie's and Freddie's purchases of low-income mortgages . . . [and] [f]rom 1992 to 1995, Fannie Mae increased its share of lower-income mortgages by 100%, while Freddie Mac increased its share by 50%."); *see Who is Fannie Mae Today?*, *supra* note 15.

[18] Phillips, *supra* note 14, at 201; *see* A. Michele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND. L.J. 189, 193 (2009).

and the Department of Housing and Urban Development (HUD), were able to increase the percentage of purchases involving loans made to low- and moderate-income groups to forty-seven percent of all mortgages purchased in 2007.[19] In all, the GSEs, the FHA, and the VA (along with numerous other local level programs and initiatives) have functioned to expand the rate of American homeownership from forty-four percent of all households in 1940, to sixty-five percent in 1970, and to sixty-nine percent by 2004.[20]

The above programs and the periodically re-affirmed policy decision to encourage increased levels of homeownership have functioned to induce those persons, historically unable to afford owning a home, to seek ownership and enabled them to gain financing despite low-income or poor credit history.[21] Before the mortgage crisis began in 2006, homeownership was broadly accepted as providing sufficient value to warrant these expansive government incentives and the financial risk taken on by individuals looking to own a home.[22] But do the alleged and almost universally accepted benefits of individual homeownership and increased homeownership rates in society still provide value to specific homeowners and the American public at large?

B. Social Benefits and Hazards of Homeownership

The most plainly observable aspect of homeownership is stable, long-term residence. The transaction costs associated with buying a home, both the time and fees involved in the process, present incentives for most purchasers to move infrequently.[23] This decreased mobility "translates into both commitment to place and stability for family."[24] Stability of location is leveraged by scholars and policy makers to assign many benefits to the homeowner.[25] These asserted benefits include increased civic participation, increased educational achievement, generally better health, further environmental awareness, and lower crime rates.[26] Although

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[19] Phillips, *supra* note 14, at 203; *see* U.S. Dep't Hous. & Urban Dev., Overview of the GSEs' Housing Goal Performance 2000-2007 6 (2009), *available at* http://www.huduser.org/datasets/GSE/gse2007.pdf (last visited Apr. 4, 2012).

[20] Chase, *supra* note 8, at 65; *see* U.S. CENSUS BUREAU, RESIDENTIAL VACANCIES AND HOMEOWNERSHIP IN THE FOURTH QUARTER 2010 1 (Jan. 31, 2011), *available at* http://www.census.gov/hhes/www/housing/hvs/qtr410/files/q410press.pdf (during the fourth quarter of 2010, the homeownership rate was sixty-six and one-half percent).

[21] Phillips, *supra* note 14, at 201.

[22] Despite general acceptance that homeownership provides a net benefit, various scholars question the personal and societal benefits of homeownership prior to the 2006 mortgage crisis. *See* James Rosenbaum & Stefanie DeLuca, *What Kinds of Neighborhoods Change Lives? The Chicago Gautreax Housing Program and Recent Mobility Programs*, 41 IND. L. REV. 653, 655–56 (2008); IAN WINTER, THE RADICAL HOME OWNER: HOUSING TENURE AND SOCIAL CHANGE 18 (1994); WILLIAM M. ROHE ET AL., THE SOCIAL BENEFITS AND COSTS OF HOMEOWNERSHIP: A CRITICAL ASSESSMENT OF THE RESEARCH 24 (Joint Ctr. For Hous. Studies of Harvard Univ., Working Paper No. LIHO-01.12, 2001), *available at* http://www.jchs.harvard.edu/publications/homeownership/liho01-12.pdf.

[23] Godsil, *supra* note 1, at 971–72; Chase, *supra* note 8, at 73.

[24] Godsil, *supra* note 1, at 971–72; *see* ROBERT D. DIETZ & DONALD R. HAURIN, THE SOCIAL AND PRIVATE MICRO-LEVEL CONSEQUENCES OF HOMEOWNERSHIP (2003), *available at* http://www.sciencedirect.com/science/article/pii/S0094119003000809 (last visited Apr. 2, 2012).

[25] *See* Adams, *supra* note 2, at 589–98; Godsil, *supra* note 1, at 971.

[26] Adams, *supra* note 2, at 590–91; Godsil, *supra* note 1, at 970–71.

these benefits directly provide value to both society at large and to the individual homeowner, benefits such as increased life satisfaction, increased self-esteem, lower divorce rates, and improved mental health represent benefits more qualitatively attributed to the individual homeowner alone.[27]

Not to be usurped by a list of altruistic benefits, increased social status is also often a significant byproduct of homeownership.[28] The assorted benefits associated with owning a home are considered by society to have been successfully attained by the purchaser upon the transition from renter to owner, regardless of whether the individual's situation has actually improved. Although a leaking roof is likely a poor contributor to mental health, society honors the homeowner's perceived achievement and success.[29] The admiration received from a group of peers in turn elevates the new owner to an increased level of social status. "In other words, the status we attribute to homeownership has the effect of increasing the well-being of those to whom we confer the status lift."[30]

The status and benefits allegedly attained through homeownership, however, may be little more than social misperception. Many, if not all, of the social benefits associated with and attributed to homeownership can also be derived from any type of long-term residence.[31] Some scholars even contend that "the spillover effect associated with increased homeownership in fact *results* from longer-term residences and *not* homeownership per se."[32] The Center for Housing Studies at Harvard University has indicated the absence of a clear causal connection between the benefits assigned to ownership and the actual results of homeownership.[33] In contending with the reverence with which Americans view homeownership and promoting ownership alternatives, authors have asserted that "[u]nder conditions of modern civilization, a man does not have to buy a cow because his family needs milk. He should not have to buy a house because his family needs a home."[34]

Compounding the discussion regarding how the benefits associated with homeownership actually manifest, there are also socially negative aspects to homeownership and long-term residence. Zoning was first upheld by the Supreme Court of the United States in 1926.[35] Zoning is in essence the legal institutionalization of what has been referred to as NIMBYism, which stands for

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[27] Adams, *supra* note 2, at 590–93; Godsil, *supra* note 1, at 970–71.

[28] Godsil, *supra* note 1, at 969.

[29] *See id.* at 969–75.

[30] *Id.* at 971.

[31] Chase, *supra* note 8, at 75–76; *see* Adams, *supra* note 2, at 591 n.91 (contending that some benefits of homeownership may be due to long-term residence while affirming that the National Homeownership Strategy attributed these benefits to homeownership specifically); *see* Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?*, 45 J. URB. ECON. 354 (1999), *available at* http://www.sciencedirect.com/science/article/pii/S0094119098920988 (last visited Apr. 2, 2012).

[32] Chase, *supra* note 8, at 75–76 (emphasis added).

[33] Adams, *supra* note 2, at 594–599; *see* ROHE, *supra* note 22, at 24.

[34] Adams, *supra* note 2, at 595 (citing ROSALYN BAXANDALL & ELIZABETH EWEN, PICTURE WINDOWS: HOW THE SUBURBS HAPPENED 109 (2000)).

[35] Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926) (holding it is permissible to segregate land uses for the "health, safety, and welfare" of the populous); *see* Phillips, *supra* note 14, at 192.

"Not In My Back Yard." Half-way homes present a good example of this dynamic. Many people believe that half-way homes for convicts or drug abusers provide a valuable resource and significant benefit to society at large by enabling those struggling on the fringes of society to re-integrate into regular life in a safe and assisted environment.[36] These homes provide a transitional residence and community while ensuring accountability, encouragement, and behavioral support to the residents. If a city decides to build such a home, the people of the town cheer for the benefit to society; when the city decides to locate the home in a certain neighborhood, however, the residents of that neighborhood will quickly unite in opposition and argue that such a home is not safe for their children, will decrease their home values, and that another, more suitable, location should be chosen to host the half-way home. The rejection of half-way homes, or any project that greatly benefits society but places a significant cost on the local residents, relates to the stake the owners hold in their homes.[37]

When owners have too small a stake in their residence, such as renters, those with low down payments, or those underwater on their mortgage from changes in the market, they are more likely to permit foreclosure or walk away from their home. However, when residents are overstaked, such as those holding their entire life savings in their home equity, they have strong incentives to protect and shape their neighborhood as is best for themselves rather than society at large.[38] The political behavior of those with large investments in their home and neighborhoods, both financially and socially, are largely driven by a desire to maximize the value of their homes.[39] When a program, such as a half-way house, will make the overall community better— and therefore increase home values in the larger region—but will have a significant detriment to a specific neighborhood, homeowners often work to relocate the program to someone else's back yard.[40] This may often force neighborhoods with less political clout or influence to end up

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[36] Edward Blacker & David Kantor, *Half-Way Houses for Problem Drinkers*, 24 FED. PROBATION 18 (1960), *available at* http://heinonline.org/HOL/Page?handle=hein.journals/fedpro24&div=29&g_sent=1&collection=journals (last visited Apr. 2, 2012).

> In general, the half-way house environment can be characterized as a group-living experience which reconstitutes the protective and supportive elements of a good family, while encouraging and providing opportunities for independent growth. It should be remembered that the alcoholics and the inveterate excessive drinkers have suffered a breakdown in their ability to get along with other people. They tend to be immature individuals whose main problem is controlling drinking behavior that is dissapproved [sic] by others. In the context of the therapeutic milieu of the half-way house, they are helped to substitute their troublesome patterns of behavior with more appropriate modes of coping with the environment.

Id.

[37] *See* Lee Anne Fennell & Julie A. Roin, *Symposium: Reassessing the State and Local Government Toolkit; Controlling Residential Stakes*, 77 U. CHI. L. REV. 143 (2010).

[38] *Id.* at 151.

[39] *Id.* at 151–52; *see* WILLIAM A. FISHEL, HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 75–76 (Harvard University Press, 2001).

[40] Fennell & Roin, *supra* note 37, at 151–52.

bearing the localized cost for the benefit of the larger region.[41]

Zoning regulations tend to use rhetoric related to the part of town in which steel refineries may be located or the required setback from the street for a residential neighborhood, but they derive their function from the sentiment that owners with significant stakes in their property want to control the value of their neighborhood and will use the political process to ensure they are protected.[42] Neighbors who are understaked in their homes may allow foreclosure upon smaller decreases in the market or their job situation, decreasing stability for the local community, while those who are overstaked in their home may fight improvements for the greater region to protect their local home value, decreasing flexibility in the regional community; each of these dynamics may limit the overall benefits of homeownership.[43]

A further potentially negative aspect of homeownership results from decreased mobility.[44] Decreased mobility is often discussed as a benefit to the homeowner, but this aspect of homeownership can cut both directions. When there is a change in the labor market, such as a local slump or a migration of specific jobs to another region of the country, the associated transaction costs or current house prices may prevent owners from transitioning with the labor market, while renters may be able to easily relocate.[45] When a homeowner's skill set is no longer demanded in a location and they are required to relocate, the ability to sell a home, especially in a recession where house prices and labor markets may fall together, may be limited and make the home a burden and risk to the homeowner.[46] In sum, many of the social benefits traditionally attributed to homeownership may at times be overstated, while the hazards of immobility and overstaking may be minimized in the minds of many when they consider the social value of homeownership.

C. Financial Benefits and Pitfalls of Homeownership

The mentioned social benefits of owning a home undoubtedly influence a potential purchaser's decision to become a homeowner, yet these attributed social benefits are further bolstered by a series of financial benefits that have been so widely preached that they seem to represent common sense to many Americans. When considering purchasing a home, a potential buyer undoubtedly will be reminded that the Internal Revenue Service (I.R.S.) permits mortgage interest and real estate taxes to be deducted from income taxes.[47] This is a significant subsidy provided by the United States Government for homeowners, as the tax revenue lost annually to homeownership benefits was approximately $230 billion in 2009.[48]

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[41] *Id.* at 151.
[42] Phillips, *supra* note 14, at 192.
[43] Godsil, *supra* note 1, at 972.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] Chase, *supra* note 8, at 66–67.
[48] *Id.* at 68–70.

Each year homeowners are entitled to deduct both the amount they pay in real property taxes and any interest paid on a mortgage or deed of trust secured by their personal residence.[49]

> The tax code tells people . . . that while their interest payments are now gargantuan relative to their income, they're [tax] deductable. Their friends tell them how impressed they are—and they mean it. Their family tells them that while theirs is indeed a big house, they have worked hard, and Americans who work hard deserve to own a dream house. Their kids love them for it.[50]

However, the tax benefit is, perhaps, the most often asserted and seldom calculated benefit of buying a home.

The tax code permits a taxpayer in a higher bracket to deduct roughly one of every three dollars spent in interest while a lower bracket taxpayer may only be able to deduct one of every six dollars spent in interest.[51] At some level, every discount helps, but in lower tax brackets, if the home was not going to be purchased regardless of the benefit, the deduction likely will not change the math on the home's affordability; although it may serve to change the perceived affordability as friends and family will certainly parrot to the homeowner that at least they can deduct the interest.[52] A further uncertainty related to real estate tax and interest deductions is that the deduction is only available to those who itemize their taxes—currently only one-third of taxpayers.[53] Taking a dubious view of tax deductions, the ability to deduct real estate taxes and interest may encourage homeowners who are able to receive a deduction to over-leverage themselves in an effort to get a more sizable deduction through selecting a larger, more costly home.[54]

Moving to arguably the most influential sentiment motivating renters to become homeowners is the dynamic of making payments on a monthly mortgage to increase one's equity in the home rather than "giving away" money to a landlord each month.[55] The ability to retain equity rather than pay rent each month is commonly referred to as wealth creation, equity accumulation, or forced savings.[56] Quite simply, a renter pays a fee each month that flows to the landlord and the only perceived benefit returning to the renter is another month of residence. Whereas a homeowner's payment each month is part fee to the lender in the form of interest while the remaining portion of the payment flows into the home as equity.[57]

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[49] *Id.* at 66–67; *see* Godsil, *supra* note 1, at 954.

[50] Adams, *supra* note 2, at 589 n.80 (quoting Michael Lewis, *The Mansion: A Subprime Parable*, CONDÉ NAST PORTFOLIO, Oct. 2008, at 141, *available at* http://www.portfolio.com/culture-lifestyle/goods/real-estate/2008/09/18/Michael-Lewis-Mansion/).

[51] Godsil, *supra* note 1, at 957.

[52] Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329, 339–47 (2009) (citing I.R.C. § 163(h) (West Supp. 2008)).

[53] Godsil, *supra* note 1, at 957; *see* Brown, *supra* note 52, at 339–47.

[54] Chase, *supra* note 8, at 69–71.

[55] Godsil, *supra* note 1, at 954.

[56] Lee Anne Fennell, *Homeownership 2.0*, 102 NW. U. L. REV. 1047, 1059–63 (2008) [hereinafter *Homeownership*].

[57] *Id.*

Equity is the residual value when comparing the price of the home and the debt owed on the home. If housing prices did not change, equity would exactly equal the down payment plus monthly principal payments made on the home.

Potential homeowners are drawn to real estate with the perception that they will be building wealth while they go about their regular lives. The oft-touted benefit of accumulating wealth through homeownership has two prongs. The first is entrance into the real estate market through debt, which for the sixty years leading up to 2006 generally was a good investment,[58] and the second is the concept of forced savings. When homeowners buy into a community they are purchasing the bricks and mortar of the building, the land associated with the property, and a financial stake in the local area and surrounding region.[59] Any changes in the value of the bricks, mortar, and land are generally attributable to the direct actions of the owner, whereas the local and regional housing markets adjust the value of the home based on supply and demand as expressed in the market through recent sale prices of comparable properties.[60] Thus, homeowners can work to protect or improve upon their investment by physically maintaining their property as well as purchasing in communities that are up-and-coming or regions experiencing a stimulus, such as job growth. A basic internet search reveals the countless get-rich-quick ideas and easy-to-follow systems peddled to consumers looking to build wealth in real estate.[61]

The second value-building aspect of homeownership is the idea of forced savings.[62] Each month an owner is forced to pay some amount of principal to satisfy the mortgage and these payments accumulate as equity; in essence, forcing the owner to set this money aside during the term of the mortgage to be withdrawn once the home is sold. By comparison, a renter is not forced to save any amount to attain their housing and will not be provided any accumulated funds once they leave the house, except perhaps a security deposit.

There are significant risks associated with entering the real estate market to build wealth, and potential homeowners should understand a few of the basic assumptions underlying such an investment. The first assumption is shrouded by a changed perception of debt by modern Americans. Debt has become the new wealth.[63] A "sometimes underemphasized potential risk associated with homeownership is the significant debt a mortgage represents."[64] When a company takes on debt to purchase an asset, entries are made on both sides of the balance sheet; thus, the net result is no increase in wealth.

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[58] *See* ROBERT J. SHILLER, IRRATIONAL EXUBERANCE (2d ed. 2005).

[59] Fennell & Roin, *supra* note 37, at 156–63, 171–74.

[60] *Homeownership*, *supra* note 56, at 1059–63.

[61] *See, e.g.*, *Real Estate Is The Name, Wealth Building Is The Game*, WEEKEND MILLIONAIRE (June 8, 2010), http://www.weekendmillionaire.com/2010/06/08/real estate-is-the-name-wealth-building-is-the-game ("Real estate is the world's greatest wealth builder. It's the only investment I know of that ordinary working people can purchase using a small amount of their earned income, yet it can produce enough revenue to pay for itself and provide a return on the cash used to leverage the purchases.").

[62] *Homeownership, supra* note 56, at 1059–63.

[63] Adams, *supra* note 2, at 599.

[64] *Id.*

For example, a $10,000 loan to purchase a $10,000 piece of equipment represents a liability in the form of debt and an asset in the form of equipment. The company makes no adjustment to retained earnings (wealth of the company). So also, when an individual purchases a home by means of a mortgage or deed of trust, they have a debt which equals the price of the home, less any down payment. Thus, there is no increase to wealth. Mathematically this makes sense when stated, and the validity of the accounting process is without contention; however, the common perception does not associate the debt with the asset. It associates the asset on its own. Homeownership is associated with wealth and freedom as if the property were owned free and clear of debt.[65] This perception may be the driver most responsible for Americans' seemingly insatiable journey into personal and national debt, and has been a key contributor to the mortgage crisis.

Debt has traditionally been associated with slavery,[66] yet in modern times the significance of taking on personal debt has been discounted and the asset of a home promoted so that a net benefit is assumed.[67] "[F]oreclosure results in the loss of the largest financial asset most [individuals] will ever own."[68] Many would agree with this assertion without much scrutiny, but homes are seldom foreclosed when the debt owed is less than the value of the home.[69] When an owner can no longer afford the payments and has equity in the home, he will sell the home and withdraw the equity.[70] Even when the house cannot be sold quickly, individuals will at times elect to declare bankruptcy, staying the foreclosure proceeding in an effort to gain time to sell the home and extract some of the equity. Foreclosure is more common when the debt is greater than the value of the home, or when real estate markets are stagnant.[71] Therefore, many foreclosures are not the loss of an asset in the sense of a net asset. Rather, foreclosure is often the loss of an asset tied to even greater debt, resulting in a net gain and benefit to the homeowner to be free from the debt. This type of situation is so common that it is the driving force behind anti-deficiency laws, such as those in California.[72] Society's modern perception of debt minimizes the risk and significance of debt and overly emphasizes the asset as if it were not encumbered by a balance due.[73]

The second assumption implicit with investing in real estate underlies the

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[65] *Id.*

[66] Michael Hudson, The *New Road to Serfdom: An Illustrated Guide to the Coming Real Estate Collapse*, HARPERS MAG., May 2006, at 39–40, http://www.insurgentamerican.net/download/Michael Hudson/Hudson_RoadToSerfdom.pdf ("In the odd logic of the real estate bubble, debt has come to equal wealth. And not only wealth but *freedom*—an even stranger paradox. After all, debt throughout most of history has been little more than a slight variation on slavery.").

[67] Adams, *supra* note 2, at 588–89.

[68] Chase, *supra* note 8, at 80.

[69] *See generally*, GRANT S. NELSON ET AL., REAL ESTATE TRANSFER, FINANCE, AND DEVELOPMENT (8th ed. 2009).

[70] *Id.*

[71] *Id.*

[72] *See generally* Carol Burns, *Will Refinancing Your Home Mortgage Risk Your Life Savings?: Refinancing and California Code of Civil Procedure Section 580b*, 43 UCLA L. REV. 2077 (1996).

[73] Adams, *supra* note 2 at 588–89.

assertion that homeownership facilitates an accumulation of equity.[74] Principal payments on a home are asserted to build equity; however, equity is the *residual* value when comparing the price of the home and the debt owed on the home.[75] Many individuals after 2006 watched the values of their homes plummet and every bit of equity stored in their homes vanish. In the stock market, when a stock appreciates in price the owner has unrealized gains. In order to access and "recognize" the gains generated by the market, the stock must be sold or a hedge purchased. If no action is taken, the appreciated price may fall back to the purchase level without providing the owner any gain. Basically, to access the change in price an owner must sell the underlying asset. Similarly, when a house appreciates, the owner is only able to secure the increase in price as actual value through selling the home.[76]

Taking price changes into consideration, the "savings" placed into a home may earn a type of capital gains or may be eroded through falling local prices and depreciation of the physical structure of the home. The traditional wisdom and benefit of using homeownership as a savings plan assumes the property value will increase or at least remain steady over time relative to inflation.[77] This assumption has generally been proven accurate over the last sixty years leading up to 2006 and, as real estate prices have consistently trended upward, those who invested in real property saw their "unrecognized" equity continue to grow over this time period.[78]

With respect to forced savings, if the value of the house does not change over the life of the mortgage, at the end of the mortgage term the homeowner will have saved the purchase price of the home. This piggy bank analogy is dependent on the assumption that the local and regional real estate markets will not decrease. Further, the money that is saved is locked away for the life of the mortgage, likely fifteen to thirty years. The lock-up period is precisely what enables forced savings, yet many who purchase homes in modern America do not consider themselves to be investing in an illiquid investment.[79] True "savings" stored in real estate cannot be withdrawn when a family runs short on cash, it cannot be accessed when the car breaks down, and it cannot even be accessed for a rainy day emergency such as hospital bills or the loss of a job. The funds are locked away in the home until the house is sold . . . or at least they used to be.

Modern financial services have provided liquidity to homeowners who are now able to access the funds they have saved, or more interestingly, to access equity created by a temporal upward shift in the housing market.[80] The family home has become an ATM. Through refinancing or a home equity line of credit,

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[74] *See Homeownership*, *supra* note 56, at 1059–63.

[75] *Id.*

[76] Although financial derivatives may be used in an effort to hedge the price or an equity insurance program may be employed as discussed later in this article, such practices are not common in modern homeownership. *See*, *infra* Part IV.C.

[77] *See generally* Shiller, *supra* note 58.

[78] *Id.*

[79] *See Homeownership*, *supra* note 56, at 1059–63

[80] Adams, *supra* note 2, at 599–604.

homeowners are able to increase their debt to gain access to the current level of equity in the home.[81] Modern homeownership permits lifestyle subsidies through ever increasing debt—quite the opposite of forced savings. Such practices call into question the traditionally purported benefits of owning a home and illustrate the shift in the American perception of homeownership.[82] To better understand this transition, the basic concepts of liquidity, illiquid investments, and asset allocation will be considered.

III. ILLIQUID INVESTMENTS

Liquidity, in an investment sense, generally refers to how quickly an asset can be turned into cash.[83] Publicly traded stocks and bonds are good examples of moderately liquid investments that can quickly be sold and converted into cash that can be immediately exchanged for needed goods or services. An automobile may take longer to sell than a stock, as the seller must locate an individual willing and able to purchase the car at the desired price, making a car a less liquid asset. A retirement savings account, such as an IRA or a 401k plan, may be further illiquid as the funds cannot be accessed or withdrawn for regular spending needs for many years depending on the age of the investor.[84] The driving force underlying the concept of liquidity is the ability to exchange; and the more standard the asset or instrument, the more readily others will trade for it.[85] For example, an ounce of gold is a standard store of value recognized by countries around the world, yet an antique table may only be appreciated by a few collectors and can only be used to facilitate exchange in certain circles. Thus, the available market of exchange as well as the form of the asset traded work to dictate the level of liquidity.

A surfboard could be considered a liquid asset in a beach community where many potential buyers are present and understand the important aspects that give a surfboard value; thus, the board likely could be turned into cash in an afternoon or just a few days. In contrast, the same surfboard will be a much less liquid asset in a rural farming community, where only few people may be interested in owning the board or understand what aspects of the board dictate its price; thus, it may take a few weeks or more to find a buyer. Interestingly, as technology and globalization better connect potential buyers and sellers across the world, certain assets that were once difficult to exchange have become quite easy to trade and therefore, have become more liquid. For instance, notable paintings tend to be held for long periods of time and only sold or purchased by a small group of wealthy patrons, making fine art an illiquid investment. Nonetheless, the market for fine art has rapidly expanded in recent years and now facilitates purchase and

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[81] *Id.*

[82] Lewis, *supra* note 50, at 173 ("[W]e are, quite obviously, a nation of financial imposters, poised to seize the first opportunity to live in houses we cannot afford . . . .").

[83] *See* Steven A. Lippman & John J. McCall, *An Operational Measure of Liquidity*, 76 AM. ECON. R. 1, 43–55 (Mar. 1986), *available at* http://www.jstor.org/stable/1804126.

[84] Although many retirement savings accounts can be accessed in emergencies or for early redemption, *for this example* the fees, time needed to execute a withdrawal, and the tax implications of receiving funds prior to the individual reaching age fifty-nine and one-half are considered preventative.

[85] *See* Lippman, *supra* note 83.

sale transactions all around the world.[86] Although artwork is less liquid than stocks or bonds, the developing international market enables patrons to more easily purchase or sell notable works, thus increasing the liquidity of fine art.[87]

A. The Yale Model

Although portfolio theorists and investment analysts have been keenly aware of liquidity for many years, David Swensen's work managing Yale University's endowment, and his subsequent publication of a book on portfolio management, brought the concept of liquidity again into the popular limelight.[88] The Yale Model, as Swensen's approach to investment management has become known, rethinks investments in alternative asset classes on the basis of liquidity.[89] At its core, Swensen's methodology considered traditional investments in classes of assets, such as stocks and bonds which can be relatively easy to trade, and theorized that buyers were paying a premium for the liquidity offered by these asset classes. Buyers were paying a premium for the ability to quickly change the asset into cash if they desired.[90]

Swensen put his theory into practice when he was selected to manage Yale's \$15 billion endowment.[91] Generally, endowments consist of assets donated to an institution for the purpose of investing the asset and receiving interest income to fund programs, faculty appointments, or operating budgets.[92] Along with padding the operating budget through contributing earned interest each year, endowments also facilitate borrowing by a university by functioning as an asset to secure debt.[93] Thus, if invested in such a way as to generate interest income greater than budgeted costs each year, an endowment could theoretically provide a stream of payments to the institution indefinitely.

Because the majority of an endowment fund is not intended for normal expenditures each year, much of the value of the endowment is able to be locked away for many years with the hope of generating greater levels of interest income. Swenson determined the Yale endowment portfolio would be able to benefit from a long-term approach.[94] To gain a benefit from the theory that liquid assets were traded at a premium, he increased investments "in real assets—timber, real estate,

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[86] Avery Booker, *What China's Millionaires Are Buying*, FORBES.COM (Sept. 16, 2010), http://blogs.forbes.com/china/2010/09/16/what-chinas-millionaires-are-buying.

[87] Kelly Crow, *Jump in Art Sales at Christie's Points to Market Rebound*, WALL ST. J. (Jan. 28, 2011), http://online.wsj.com/article/SB10001424052748704268104576108220603229768.html.

[88] *See generally* DAVID F. SWENSEN, PIONEERING PORTFOLIO MANAGEMENT: AN UNCONVENTIONAL APPROACH TO INSTITUTIONAL INVESTMENT (2009).

[89] Daniel Golden, *Cash Me If You Can*, PORTFOLIO.COM (Mar. 18, 2009), http://www.portfolio.com/executives/2009/03/18/David-Swensen-and-the-Yale-Model.

[90] *See generally* Swensen, *supra* note 88.

[91] Marcia Vickers, *The Money Game*, FORTUNE MAG. (Oct. 3, 2005), http://money.cnn.com/magazines/fortune/fortune_archive/2005/10/03/8356742/index.htm.

[92] Frances R. Hill, *University Endowments: A (Surprisingly) Elusive Concept*, 44 NEW ENG. L. REV. 581, 584–87 (2010).

[93] *Id.* at 590.

[94] Vickers, *supra* note 91.

and the like—from 8.5% to 29.3%; and in hedge funds, from zero to 25.1%."[95] During this shift, Swensen decreased the share of Yale's assets invested in domestic stocks and bonds from 71.9% to just 14.1%.[96] In essence, Swensen moved large portions of the investment fund from relatively liquid assets to relatively illiquid assets. For example, some of the hedge fund investments by contract did not permit Swensen to withdraw any money for a set period of time.[97] Swensen's use of long-term illiquid investments earned the university an average return of 16.1% each year over the last two decades.[98]

The idea to move toward illiquid investments took root with endowment managers and spurred a shift in strategy at many universities across the country.[99] Managers observed Swensen earning a higher return on the investments while even reducing the total risk of the portfolio through diversifying across various classes of assets.[100] Risk is greater when all the investments are placed in the same class of assets; yet when investments include asset classes that are not correlated to each other, the total risk decreases. A normal diversification would be to move part of an investment portfolio's funds from the stock market to the bond market; thus if stocks drop dramatically the portfolio will only fall slightly as part of the funds were in bonds. The downside is that bonds tend to provide a lower return than stocks, thus managers usually must sacrifice higher returns for lower risk. Swensen was able to move into long-term assets which had no correlation to each other and therefore the entire portfolio would be less affected if one class of assets performed poorly.[101] The benefit was that instead of lower payments from bond markets, Swensen was able to receive higher total returns because he was willing to commit the funds for longer periods of time and benefited from his realization that investing in liquid assets costs the investor a premium in the form of lower returns.[102]

Economic downturn revealed what some have called "a major flaw in the Yale model: Alternative investments like private equity and real estate are very difficult to convert to cash without significant loss . . . ."[103] When an investor needs cash stored in a traditional savings account or money market account, he can almost instantly withdraw the cash to use. If those same funds were invested in stocks or bonds traded on the public markets, when cash is needed he may have to wait a few days for the trades to clear and may be forced to recognize some losses due to early trades, but he will be able to receive the funds relatively quick for use.

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[95] Golden, *supra* note 89.

[96] *Id.*

[97] *Id.*

[98] Vickers, *supra* note 91.

[99] Golden, *supra* note 89.

[100] *Id.* Diversifying seeks to hold in one portfolio various assets which are not correlated to one another. *Id.* Thus, when one asset drops in price, the others may remain constant and enable the total portfolio to avoid large losses from the individual asset. When uncorrelated assets are held in one portfolio, in theory, the average return will be attained by the portfolio without subjecting the investor to risk of significant loss by any single asset. *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.*

With an illiquid investment, on the other hand, an investor does not have the ability to quickly access or withdraw needed funds—either by contract or by the nature of the asset. "When financial commitments came due in late 2008, many endowments, with their funds tied up in illiquid investments, were unable to get cash."[104] "To protect themselves, many institutions are now stress-testing their portfolio to figure out the appropriate level of liquidity needed in case of another market upheaval."[105] The famous adage that "Cash is King" moves from catch phrase to daily practice during a recession or general downturn in business activity.[106] As many struggle to keep current on their obligations, those with sufficient cash are able to avoid bankruptcy as well as pick up good deals from those selling under priced assets because of their need for liquid funds. The importance of liquidity applies with equal force to personal financial and homeownership decisions as it does to business planning and corporate investment decisions.

B. America's Favorite Illiquid Investment

Similar to the endowment managers who transitioned their funds to mimic the Yale Model, homeownership is a transition for many people from holding funds in savings accounts or stock investments to locking away a major portion of their available funds in an illiquid investment. Not only are the funds used for the down payment no longer able to provide a safety net to the homeowner if a rainy day arrives, but also, future cash flows are committed to supporting the mortgage through monthly payments. Although any principal the owner pays toward his mortgage each month will be "stored" via equity in the home, these funds will not be available for other uses until the home is sold. While rent paid to a landlord in a specific region is generally less costly than mortgage payments in the same region, common advice asserts that the tax savings will offset the difference.[107] Yet even where the tax benefit applies, to afford a home, a potential buyer must have sufficient cash flow to make the higher payments on a monthly basis while also accounting for added repair, insurance, and property tax costs.

Due to the long-term nature of illiquid investments, such investments are not appropriate for those who may need funds for other uses during the term of the investment. For example, traditional wisdom asserts employees should be

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[104] Katherine Ryder, *The University Endowment Model: Cracked, Not Broken*, CNNMONEY.COM (July 12, 2010), http://money.cnn.com/2010/07/06/news/economy/university_endowments.fortune/index.htm (stating the Yale Model, "is predicated on the idea that an endowment, which supports a significant portion of costs for most universities, is a long-term fund and should therefore structure its portfolio to maximize future gains. It should take on risk with investments in alternative assets such as private equity and hedge funds, and hopefully earn a large premium from it. Even if markets take a dip, the thinking goes, endowments can hold onto illiquid assets and ride out the storm until asset valuations rise again").

[105] *Id.*; *Liquidity and Credit Risk at Endowed U.S. Universities and Not-for-Profits*, MOODY'S INVESTOR SERVICE (June 14, 2010), *available at* http://nhhefa.com/documents/moodyLiquidityandCreditRiskandEndowedU.S.UniversitiesandNot-for-Profits.pdf.

[106] Emily Chasan, *Cash is King for Companies Facing Hard Times*, REUTERS (Feb. 10, 2009), http://www.reuters.com/article/2009/02/10/us-cash-turnaround-idUSTRE5192TT20090210.

[107] *Rents Lower Than Mortgage Payments—Except in London*, THE INDEPENDENT (Oct. 11, 2009), http://www.independent.co.uk/money/mortgages/rents-lower-than-mortgage-payments-ndash-except-in-london-1800802.html.

contributing to a 401k or IRA plan during their working years. If monthly income outstrips monthly living costs by a mere $100, the employee may be able to keep a small savings account with his bank, but does not have sufficient earnings to lock away funds until he reaches age fifty-nine and one-half and is able to access the funds. The employee's car may break down, he may get sick, or food prices may increase in the region. Sequestering funds in a retirement plan will decrease the liquidity of those funds and as a result will decrease the liquidity of the individual, possibly leading to increased credit card debt, emergency borrowing to meet expenses, or bankruptcy.

Although foresight asserts employees should utilize tax-free growth of capital offered through retirement savings plans, when evaluating the financial condition of a *specific* individual there must be a consideration of how much liquidity that individual will require for ongoing and emergency expenses. Only earnings or funds in excess of an individual's liquidity requirements should be placed in illiquid investments. Locking away funds in a retirement account or in the purchase of a home exposes the individual to an increased risk of running out of liquid funds and having to take drastic measures to meet expenses. Steps such as an early withdraw from a retirement account, selling a house when the market is depressed, building up significant credit card debt to meet regular expenses, or even seeking bankruptcy protection while holding equity in the family home all illustrate the painful realities individuals may face if they fail to retain sufficient liquidity. Such financially detrimental consequences likely will overshadow any gains associated with tax-free equity growth in a retirement savings account or benefits, social or financial, associated with homeownership.

C. A Tale of Two Neighbors

To illustrate the liquidity and risk differences between renters and owners, consider two fictional families living on the same street. The Garcia family purchased their home in 1990 for $300,000 with a $60,000 down payment while financing the remaining $240,000 through a 30-year fixed loan at the rate of 10.13%.[108] With this mortgage the Garcia family had a monthly payment of roughly $2,130.[109] Just down the street, the Wong family moved into a nice home also early in 1990; however, the Wong family decided to rent their home for $1,800 each month and invested their $60,000 savings in a mutual fund duplicating the S&P 500.

By 2010, the Garcia family has paid $431,274 in interest, $79,751 in principal,[110] and their total home value has risen to $575,538.[111] The Garcia

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[108] The average annual interest rate in 1990 was 10.13% and is used for this illustration. *30-Year Fixed-Rate Mortgages Since 1971*, FREDDIEMAC, http://www.freddiemac.com/pmms/pmms30.htm (last visited Apr. 4, 2012).

[109] *Simple Loan Payment Calculator*, MORTGAGE-CALC.COM, http://www.mortgage-calc.com/mortgage/simple.html (last visited Apr. 4, 2012).

[110] *Amortization Schedule Calculator*, MYAMORTIZATIONCHART.COM, http://www.myamortization chart.com (last visited Apr. 4, 2012).

[111] *S&P Case-Shiller 10 City Home Price Index*, ECONOMIC RESEARCH FEDERAL RESERVE BANK OF ST. LOUIS, http://research.stlouisfed.org/fred2/series/SPCS10RNSA/downloaddata?rid=199 (last

family has been "forced" to save $139,751 of their income in their home (down payment plus principal payments) and have received a benefit of $275,538 from the increase in the value of their home. The Garcia family has provided a stable home for their family over the last twenty years and if they decide to sell their home this year, after paying off their mortgage they will have $415,289 in cash.

By 2010, the Wong family has paid $432,000 in rent and the family investment from 1990 has grown to $333,600.[112] The Wong family has saved $79,200 in monthly costs as their rent payment has been less than the comparable mortgage payment. Thus, the Wongs have provided a stable home for their family over the last twenty years and have $412,800 in cash from their lower housing costs and investment.[113]

During the years the Garcia and Wong families occupied their respective homes, if the job market substantially changed or a large sum of money was needed for an emergency, the Wong family would likely have been able to quickly liquidate their stock investment or move to a new area; whereas the Garcia family may have been unable to sell the home at a favorable price or may have been forced to increase their investment in their home through taking a home equity line of credit to meet the emergency. Whatever the events experienced by these families, the Wong family was liquid while the Garcia family was illiquid during the course of their investment while both secured stable housing on the same block for their families. This admittedly simplified example does not consider repair costs, insurance premiums, or other probable expenses; however, it presents the general proposition that over the last twenty years, investing in liquid assets and renting a home could have produced a similar result to investing in illiquid assets through purchasing a home while also offering superior financial flexibility.

IV. MODERN HOMEOWNERSHIP

During the years immediately leading up to 2006, rapidly increasing home prices mitigated the transaction costs and disguised the illiquid nature of investing in real estate. Ever expanding access to credit, speculators flipping homes for a profit, and increased volumes of transactions made real estate appear to be quite liquid.[114] Homeowners saw the values of their family homes skyrocket and those pursuing the American dream of buying a home feared they would soon be priced out of the appreciating housing market. Before the housing market soured, there existed a noticeable change in the national perspective of the meaning of

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visited Apr. 4, 2012). Index data sample generated using "Index 2000=100" and date range "1990-01-01" to "2010-01-01." *Id.*

[112] *Compound Annual Growth Rate (Annualized Return)*, MONEYCHIMP.COM, http://www.moneychimp.com/features/market_cagr.htm (last visited Apr. 4, 2012). Annualized return of S&P 500 from 1990 through 2010 was 8.51%. *Id.*

[113] This illustration is intended to show the general relationship between renting and purchasing a home, and is not intended to capture the full complexity associated with the investment decisions presented. As such, the example does not consider dollar–cost–averaging investment of savings on rent payments relative to mortgage payments, tax benefits or consequences, potential changes in rental costs over time, insurance costs, maintenance and repair costs, etc.

[114] *See* Peter Y. Hong, *Don't Bank On Your House As An ATM*, L.A. TIMES (Sept. 27, 2009), http://articles.latimes.com/2009/sep/27/business/fi-cover-housing27.

homeownership. The primary benefit of a home shifted in the minds of many Americans away from providing a long-term residence or simply a mark of social status and toward a financial asset and conduit that only a fool would neglect to utilize for building wealth or funding a higher standard of living.[115]

A. The Family Home as a Financial Asset

The efforts of federal programs and housing initiatives have served to dramatically increase homeownership rates over the last sixty years.[116] Recent data examining the use of subprime lending, however, seems to indicate that ever expanding credit policies and financial services are generating diminishing returns in regard to helping first-time homebuyers make their initial home purchase.[117] In the years leading up to 2006, a significant portion of newly originated subprime loans were utilized by existing homeowners to re-finance their homes or to draw upon a home equity loan rather than by renters using the financing to springboard themselves into homeownership.[118] Specifically, the data reveals that on a nationwide basis, between 1998 and 2006, only 1.4 million of the 15.1 million issued subprime loans were provided to first-time homebuyers.[119] That is less than ten percent. The expansion of financial services to borrowers with risk levels traditionally considered preventative was intended to enable renters to transition into homeownership, yet the data appear to indicate that the vast majority of borrowers were using their homes and modern mortgage finance to expand their already existing real estate holdings.

Common channels by which a home is transformed into a financial asset are the home equity loan and the home equity line of credit (HELOC). Rather than sell the home to immediately recognize the equity gains from a market increase or wait out the investment until the debt is fully paid off, homeowners can increase their debt to match the value of the home as estimated by the market at that given moment. The home equity loan enables the homeowner to access funds stored in the home by taking out a second loan on the equity; the difference between the market price of the home and the debt owed on the home.[120] Equity is accumulated through payments made on the original loan, changes in the value of the home based on the surrounding housing market, and the down payment initially made at the time of purchase.[121] A home equity loan is a one-time lump

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[115] *See id.*; s*ee* Cash-Out Vol. Annual, FREDDIE MAC (Jan. 2012), http://www.freddiemac.com/news/finance/docs/cashout_vol_annual.xls. In 1995, homeowners cashed out a mere $11.2 billion in equity, whereas in 2006, home-equity borrowing soared to $320 billion. Cash-Out, *supra* note 115.

[116] *See supra* text accompanying notes 8–22.

[117] *See* Phillips, *supra* note 14, at 204.

[118] *Id.*

[119] *Id.*; *see* Dickerson, *supra* note 18, at 203–06.

[120] *See Home Equity Loans and HELOCs—Getting a Good Deal*, WALL ST. J., http://guides.wsj.com/personal-finance/buying-a-home/the-basics-of-home-equity-loans-and-lines-of-credit/ (last visited Apr. 4, 2012) ("At some point, you'll probably need money that you don't have handy, possibly for a home improvement project or a large, unexpected expense. What do you do if you don't have the money in your checking account? If you own your home, you have the option of getting a home equity loan or a home equity line of credit.").

[121] *Id.*

sum paid to the borrower and secured by the equity in the home. It is sometimes issued up to 125% of the homes appraised value under the assumption house prices will continue to increase.[122]

The other common means by which owners are able to utilize their home as a financial asset is through a home equity line of credit. A HELOC is similar to a home equity loan; however, instead of a one-time payment, the borrowed funds are accessed as needed through a credit or debit card and the debt is secured by the equity in the home as it is withdrawn by the owner.[123] Either method of accessing equity provides the owner an ability to use funds which have been locked away in their long-term investment.

The change in perspective that is significant to the modern homeowner relates to this ability to access cash as if the asset were a liquid investment. In reality, the nature and ability to liquidate the investment has not changed; cash is simply able to be borrowed against the asset. As a homeowner takes out a home equity loan or home equity line of credit in response to an increase in regional house prices, or to access the equity built up in the home through regular principal payments, the owner is actually *increasing* the debt and the amount of current and future funds that must be committed to the illiquid real estate investment, despite feeling as if they are utilizing a liquid asset.

Debt has become perceived as an asset and a form of wealth,[124] and homeowners have actively been using this debt-asset. "For every dollar of house-price appreciation, homeowners take out 3, 4, or even 10 cents of their home equity for other consumption purposes, such as making home improvements, buying new cars or appliances, or even taking vacations."[125] Through modern financial arrangements, homeowners are able to convert house price appreciation into cash and spend this new found "wealth" on improving their standard of living. Such a financial operation is akin to borrowing against unrecognized capital gains on a stock. When legal, similarly complex stock market situations may be understood and employed by wealthy investors (more likely by their brokers and accountants),[126] but few homeowners can be expected to understand the precarious

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[122] *Id.* ("Most home-equity loans and HELOCs use the following formula to determine how much to lend: 75–80% of current home's value (determined by an appraiser's visit, which you pay for) minus the amount you owe on your mortgage. When real estate values decline, getting a HELOC gets tougher, but it's still an option for many homeowners. Some lenders will lend you even more than 80% of the value of your home—up to 100% or even 125% of the home's appraised value. But a home equity loan that large is risky, since your home might not appreciate that much by the time you're ready to sell. Indeed, home values haven't risen much at all of late. If your home declines in value or rises very little, you could get stuck owing money on your home equity loan, even after you sell the house."); *see also* Ruth Simon, *Lenders Rethink Home-Equity Loans*, WALL ST. J. (Jan. 16, 2008), http://online.wsj.com/article/SB120044716100193017.html (asserting "piggyback" loans permit lenders to borrow up to 100% of the home's value by combining a mortgage with a home-equity loan).

[123] *See Home Equity*, *supra* note 120.

[124] Adams, *supra* note 2, at 599; *see* Lewis, *supra* note 50, at 173 (stating "we are, quite obviously, a nation of financial imposters, poised to seize the first opportunity to live in houses we cannot afford").

[125] Wenli Li & Fang Yang, *American Dream or American Obsession? The Economic Benefits and Costs of Homeownership*, 3 BUS. REV. 20, 23 (2010), *available at* http://www.philadelphiafed.org/research-and-data/publications/business-review/2010/q3/brq310_benefits-and-costs-of-homeownership.pdf.

[126] *See The Hidden Entitlements*, CITIZENS FOR TAX JUST., http://www.ctj.org/hid_ent/part-2/part2-

nature of such an arrangement. As the debt is topped up to match the appreciated market price, the risk that a downward shift in market prices will take the homeowner into the tenuous position of owing more on the home than it is worth substantially increases. To the modern homeowner, "a house is no more a means of forced savings than putting money into stock mutual funds,"[127] and an appreciating home price has come to represent an increase in wealth regardless of the equivalent debt required to access the new funds.

Illustrating modern Americans' comfort with debt, author Shira Boss in her book, *Green with Envy*, develops a story about a young couple who at first frugally save and build a reasonable life together, but as they stretch to buy a home and transition into a higher class neighborhood they are enticed into the more expensive lifestyle of their neighbors that steadily outreaches their budget.[128] The story unfolds with the couple taking on more and more debt to keep up the lifestyle they feel they deserve and that their neighbors seem able to maintain.[129] Relating to many real world examples leading up to the mortgage crisis, the couple's perception of their own wealth, specifically their ability to afford an inflated lifestyle, was tied to their acquisition of a costly home. The larger debt associated with the nicer home translated in their minds into greater wealth, despite the truth that the increased debt was simply that, greater debt. In 2005, Americans aggregately expressed their comfort with debt when, "for the first time since the Great Depression, the nation's savings rate dipped below zero, meaning the average American was spending more than he earned. Families were doing this, some economists reckoned, because they figured the rising value of their home was providing all the savings they needed."[130]

The Obama Administration weighed in on the modern use of the family home as a financial asset in its February 2011 report to Congress on housing finance.[131] In its report the Administration asserted that before the market downturn, when average home values in many parts of the country had skyrocketed:

[m]ortgages became tools for speculative, short-term investments and a means to access easy cash. Lulled into a false sense of an ever-rising real estate market, some homebuyers took on more debt than they could afford to purchase

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2.htm (last visited Apr. 4, 2012).

[127] Li, *supra* note 125.

[128] SHIRA BOSS, GREEN WITH ENVY: A WHOLE NEW WAY TO LOOK AT FINANCIAL (UN)HAPPINESS (2006); *see Weak Housing Market May Not Be Signal to Buy*, MORNING EDITION, NAT'L PUB. RADIO (Nov. 9, 2007), http://www.npr.org/templates/story/story.php?storyId=16133435 (This article asserts young people often feel pressured to buy a home: "That's something I would love to caution young people against . . . that feeling that, 'Oh my gosh, owning real estate is something to aim for, and if we're renting, we're basically losing money every month . . . .' You can get in this kind of panic attack when you're young about having to buy." "It's not necessarily something everybody can do or everybody should do," Boss says. "We should . . . relax and not push people into real estate as something they have to do.").

[129] *Id.*

[130] DANIEL MCGINN, HOUSE LUST: AMERICA'S OBSESSION WITH OUR HOMES 9 (2008).

[131] *Reforming America's Housing Finance Market: A Report to Congress*, U.S. DEP'T OF THE TREASURY 5 (Feb. 2011), *available at* http://www.treasury.gov/initiatives/Documents/Reforming%20America%27s%20Housing%20Finance%20Market.pdf.

homes beyond their means, and existing homeowners used their homes like ATM machines by converting home equity to cash.[132]

The report notably included an attempt to shift American expectations and ideals of homeownership away from the ever-expanding dream of homeownership, which had consistently been trumpeted by previous presidents.[133] The report looked to a more balanced goal that seeks to "ensure that all Americans have access to quality housing that they can afford."[134] The report states, "[t]his does not mean our goal is for all Americans to be homeowners. We should continue to provide targeted and effective support to families with the financial capacity and desire to own a home . . . as well as a range of options for Americans who rent their homes."[135] The report's rhetoric highlights the post-housing market crisis sentiment that is developing and finding its voice across the nation. Americans, perhaps for the first time, are skeptical of real estate. A struggling homeowner who has been unable get out from under two investment properties asserted, "I wanted to follow the American Dream . . . I wanted to be an entrepreneur and make some money—not a killing, but some money. Instead, I got a kick in the rear."[136] There is still a healthy appetite for homeownership according to Fannie Mae economists, but the reasons driving individuals and families to seek homeownership may be shifting back toward the traditional benefits associated with long-term residence rather than financial gain.[137] Where does this leave the American dream of homeownership? Scholars have set out two interesting proposals to reshape how Americans perceive and relate to obtaining a stable, long-term residence.

B. The Rental Alternative

While mortgage laws evolve, housing prices fluctuate, and the structure of the mortgage finance industry transforms,[138] homeownership rates continue to fall in the United States.[139] More individuals and families are meeting their housing

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[132] *Id.*

[133] *See, supra* text accompanying notes 4–5.

[134] *Reforming*, *supra* note 131, at 1.

[135] *Id.*

[136] *Home 'Flippers' Get Burned Chasing Their Dream*, CNBC (Oct. 1, 2007), http://www.cnbc.com/id/21080234/Home_Flippers_Get_Burned_Chasing_Their_Dream.

[137] Les Christie, *Housing Bust? So What? We Still Want to Own*, CNNMONEY (Dec. 16, 2010), http://money.cnn.com/2010/12/16/real_estate/homeownership_desire_high/index.htm.

[138] Editorial, *An End to Fannie and Freddie?*, N.Y. TIMES (Feb. 16, 2011, 7:26 PM), http://www.nytimes.com/2011/02/17/opinion/17thu2.html.

[139] *See The Rentership Society*, ECONOMIST (Jan. 31, 2011), http://www.economist.com/blogs/freeexchange/2011/01/housing_markets_0 ("To get more people in homes, mortgage standards had to fall, and fall they did. There was your ownership society, the period from 1998 to 2005 during which households that couldn't previously get a mortgage got one (or often, several). We've now come full circle. The homeownership rate is back to 1998 levels. Meanwhile, the rental vacancy rate is falling steadily. I suspect homeownership will fall a bit more for demographic reasons in the years ahead. And then, when interest rates rise, it will fall some more. The hope is that by that time, enough supply will have shifted from owner-occupied to rental housing to prevent a drop in ownership from producing more housing market havoc.").

needs through renting than they have for the last ten years.[140] The various social benefits associated with homeownership are reasonably thought to be derived from the owners' ability to secure a stable, long-term residence rather than actual ownership of the property;[141] but renters struggle to secure such stability when rent can be increased periodically and rental agreements generally span only a period of one year or less. Professor Arlo Chase sets forth a blueprint for a Rental Stability Program that would enable renters to secure long-term residence through option agreements that provide the renter an ability to continue to lease for a period greater than five years through option renewals and it includes rent increases regulated at each renewal by a rent guidelines board.[142] This proposal contends that perhaps the American fascination with homeownership, along with the history of government sponsored rhetoric and programs to promote ownership, can be viewed as a sentiment against renting.[143]

Perhaps the strongest argument offered in favor of a long-term rental program relates to the accumulation of social benefits in the neighborhood in renting as compared to the accumulation of monetary benefits in the house price during ownership.[144] "Long-term residents have the same interest as owners in living in clean and safe neighborhoods with good schools. Thus, long-term tenants are similarly likely to be engaged in civic affairs."[145] The compelling difference between owners and renters in such a situation is that renters are unable to benefit from their years of involvement in the community or the involvement of their neighbors if they move away from the area. Owners are able to sell their homes at a premium to gain a private benefit from their or their neighbor's efforts to improve the community. However, those with a long-term rental stake in a community are only able to benefit from such civic-minded efforts by remaining in the community. Therefore, "increased stability achieved by rent control in fact encourages more robust long-term community involvement than homeownership because it forces the tenant to stay in place to share the benefits of community improvement, rather than enabling the resident to benefit from those improvements by selling their home at a premium."[146]

Such a location-centric value proposition makes renting, if provided on a long-term basis, perhaps the ideal mix of motivation to invest in the community as well as a disincentive to later abandon the improved community. Because the detriments of residents taking too large of a stake in their community still remain, such as NIMBYism, perhaps the acquisition of a healthy long-term housing situation could be attained through such a Rental Stability Program while not forcing the individual to commit significant funds to an illiquid investment. Thus, such a program would separate the home as a place to live from the home as a financial investment. If job markets shift or emergencies develop, the individual

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[140] *Id.*
[141] Chase, *supra* note 8, at 75–76.
[142] *Id.* at 93–108.
[143] *Id.* at 61–63; Adams, *supra* note 2, at 609.
[144] Chase, *supra* note 8, at 75–77.
[145] *Id.* at 75.
[146] *Id.* at 77.

remains somewhat financially liquid and, although moving will create a loss of community as it would in any relocation, the resident would not result in a double loss of community and financial position.[147]

C. The Insurance Alternative

Taking a different approach to modern homeownership, some scholars propose equity insurance programs, home value hedging arrangements, collective equity, or shared appreciation models.[148] For example, the Homeownership 2.0 proposal seeks to advance the academic dialogue by proffering a system of ownership that would create an investment market for housing risk and enable an owner to off-load the risk of house price fluctuations to investors.[149] This would protect the owner from national, regional, and local housing market price fluctuations.[150] Homeowners would be able to isolate their purchases from external market factors by selling off potential location-specific housing market appreciation to investors to bring down their initial purchase price, and by insuring against decreases in home value also through off-loading the risk on a trading market.[151] Homeownership 2.0, or a program along similar lines, would enable potential owners to secure a long-term residence with stable monthly costs while protecting themselves from the risks of a fluctuating housing market at a national, regional, or local level. Although such an arrangement will reduce the volatility of their investment, it still does not change the illiquid nature of their real estate investment and may, in fact, further reduce future flexibility through contractual obligations assigning benefits and risks to investors.

D. The Affordability Alternative

Locking away funds in a home is appropriate, and avails a homeowner of the benefits already discussed, when a homeowner purchases a home for which they have sufficient liquidity to support. To avoid bankruptcy an owner generally must have income streams sufficient to afford mortgage payments, groceries, vacations, vehicles, moderate emergencies, regular savings, etc.[152] This speaks to buying a house one can afford. As few individuals have the funds to buy a home outright and plan on receiving a loan, how much house can a person afford?

A traditional method of estimating affordability relates the house price to the

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[147] The plan set forth by Professor Chase addresses the scenario of a resident electing to depart from their lease before the term ends by structurally creating a short-term lease with the option to renew. A relocation forced by job prospects or emergencies would involve simply electing not to exercise the next option and possibly breaching the current short term lease. *Id.* at 94–97.

[148] *See generally Homeownership*, *supra* note 56; Robert I. Lerman & Signe-Mary McKernan, *Promoting Neighborhood Improvement While Protecting Low Income Families*, 8 URB. INST., May 2007, *available at* http://www.urban.org/uploadedpdf/311457_Promoting_Neighborhood.pdf.

[149] *Homeownership*, *supra* note 56, at 1082–83.

[150] *Id.*

[151] *Id.* at 1078–82

[152] *See* BOSS, *supra* note 128 (costs may also include an increased standard of living as the owners seek to comport with the spending habits of their new neighbors).

purchaser's annual income through a multiplier.[153] Although using an annual income multiplier around two or two and one-half was the standard measure of affordability at one time, it has fallen into disuse in recent years.[154] This is possibly because using such a multiple simply did not allow individuals to purchase the size of home in the location they desired or in which they saw their friends buying. A potential buyer under this measure who earned $70,000 each year would be able to afford a home valued between $140,000 and $175,000. In states like California, housing prices have increased substantially away from this multiple such that the idea of buying a home for less than $200,000 makes many buyers wonder how close the home is located to a flood zone.[155] Modern lending practices have moved away from evaluating total price and have tended to focus more directly on the monthly mortgage payments.[156]

Affordability, therefore, has moved for many to a monthly figure rather than a value proposition. Strikingly, under such a system the same monthly payment can be considered sufficient to finance a wide range of home prices depending on the interest rate and loan term applied. In taking a page from the car salesman's book, affordability can be calculated by focusing on the amount a potential buyer can afford each month, while the term of the loan is adjusted to make the home "affordable" regardless of the actual price of the home or the actual amount of debt hefted upon the purchaser's shoulders.[157]

For example, a $1,000 monthly payment would only be able to support a home costing $98,770 using a ten-year loan at four percent interest;[158] while on the other hand, the same $1,000 monthly payment could support a home costing $209,461, using the same four percent interest rate if the loan were to be extended

[153] Adams, *supra* note 2, at 584–88 (asserting the FHA initially used an annual income multiple to calculate affordability).

[154] *See* JOHN P. DEAN, HOME OWNERSHIP: IS IT SOUND?, 40 (1945) (interestingly, Freddie Mac still uses the annual income multiple method to determine affordability); *see How Much Can You Afford?*, FREDDIE MAC, http://www.freddiemac.com/homeownership/ready_to_buy/how_much_can_you_ afford.html (last visited Apr. 5, 2012).

[155] In 2009 the average income in California was $42,548 while the median house price was $304, 520. Using these averages, a California resident could expect to spend over seven times her annual income to purchase a home. *See Median California Home Price $304,520 in November*, SILICON VALLEY DAILY, Dec. 26, 2009, *available at* http://www.svdaily.com/realestateprices.html ("The median price of an existing, single-family detached home in California during November 2009 was $304,520."); *Annual Personal Income from the 1950s California and U.S., Per Capita—Current Dollars*, U.S. BUREAU OF ECONOMIC ANALYSIS, Sept. 20, 2010, *available at* http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Income.htm (select: Per Capita and Current Dollars. Average income in California in 2009 was $42,548.).

[156] Adams, *supra* note 2, at 584–85.

[157] *See* L. James Johnson, *Car Dealer Tricks: Monthly Payments VS. Purchase Price—Part II*, BEST CAR BUYING ADVICE (July 24, 2010), http://www.bestcarbuyingadvice.com/blog/1047526_car-dealer-tricks-monthly-payments-vs-purchase-price--part-ii; *see* David Weliver, *Ex-Car Salesman Tells All: How to Beat the Auto Dealerships at Their Own Game*, MONEYUNDER30.COM (Sept. 19, 2006), http://www.moneyunder30.com/negotiate-with-car-salesmen.

[158] Michael Hudson, *The New Road to Serfdom: An Illustrated Guide to the Coming Real Estate Collapse*, HARPER'S MAG., May 2006, at 39, 40, *available at* http://www.insurgentamerican.net/download/MichaelHudson/Hudson_RoadToSerfdom.pdf.

over a period of thirty years.[159] The relative affordability of a home becomes blurred when looking from a monthly payment perspective, and exceedingly more so when the loan term, interest rate, and points prepaid at the closing are adjustable. In the example above, the total price paid including interest, using the ten-year loan is nearly $120,000 (roughly twenty-two percent more than the amount financed) while the total price paid using the thirty-year loan is nearly $360,000 (roughly seventy-two percent more than the amount financed).[160]

Despite the delight of the potential buyer at the loan officer's expansive assertion of what house price levels the buyer is able to afford, using monthly payments to determine affordability distorts the significance of the debt and dilutes the fact that the owner in the example will be committed to making payments for an additional twenty years![161] Focusing on monthly payments may enable the buyer to get into a larger and nicer home, but by massaging the numbers the buyer may be obligating more current and future cash flows to an illiquid investment than is prudent or even understood.[162] "Potential home buyers often ignore the usual signals of affordability and fail to meaningfully consider the debt associated with homeownership."[163]

In addition to considering total sticker price, potential buyers usually are required to provide some sort of down payment. As such, perhaps an informative measure of affordability relates simply to the ability to provide a substantial down payment. Down payments provide a buffer against depreciation in house prices soon after the purchase and form the owner's initial stake in the property.[164] Without this protection, a purchaser will not be able to sell the home for the same price he purchased it until a depressed market recovers, thus limiting the owner's options in the event of an emergency even at the very first moment after purchase. Forty-three percent of first-time home buyers made no down payment in 2005,[165] the median down payment in 2006 was only two percent,[166] and it is estimated that in 2008 ten percent of homeowners owed more on their mortgage than their home

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[159] *Id.*

[160] *See Loan Calculator and Amortization*, BANKRATE.COM, http://www.bankrate.com/calculators/mortgages/loan-calculator.aspx (last visited Apr. 4, 2012) (Example 1: $98,770 financed, 10 year loan term, 4.00% interest rate = $21,229.79 interest plus $98,770 principal = $119,999.79; Example 2: $209,461 financed, 30 year loan term, 4.00% interest rate = $150,538.59 plus $ 209,461 principal = $359,999.59).

[161] *See* Adams, *supra* note 2, at 601 (The practice of focusing on monthly payments rather than total size of the loan "caused Americans to perceive housing as relatively affordable, even during the boom period when housing prices were rising so rapidly.").

[162] *See supra* text accompanying notes 83–106.

[163] Adams, *supra* note 2, at 589 n.80 (citing Michael Lewis, *The Mansion: A Subprime Parable*, CONDE' NAST PORTFOLIO, Oct. 2008, at 136, 140, *available at* http://www.portfolio.com/culture-lifestyle/goods/real-estate/2008/09/18/Michael-Lewis-Mansion/ ("To blame the people who lent the money for the real estate boom is like blaming the crack dealers for creating addicts.")).

[164] *See supra* text accompanying note 38.

[165] Adams, *supra* note 2, at 602 (citing Nat'l Ass'n of Realtors, the 2005 National Association of Realtors Profile of Home Buyers and Sellers 5 (2005)).

[166] Adams, *supra* note 2, at 602; *see* Kenneth R. Harney, *20% Down Seems Like Ancient History*, L.A. TIMES, Feb. 11, 2007, at K3, *available at* http://jonmajarian.com/index.php?option=com_content&task=view&id=110&Itemid=44.

was worth.[167] The inability and unwillingness to provide a twenty-percent down payment on a home may be an indicator that the home is actually not affordable for the potential purchaser. Using a down payment as a measure of affordability is by no means precise as the potential purchaser may have saved for many or few years to generate the down payment, and such a measure gives no indication of future cash flows available to satisfy the forward running loan obligation.

V. CONCLUSION

Buying a home is and will remain for many Americans one of the most culturally significant life events. Nevertheless, many in coming years will approach homeownership with greater caution than was utilized prior to the mortgage crisis, and for good reason. The pain experienced or observed during the recent drop in mortgage markets and ensuing waves of foreclosures will leave a lasting scar on the American psyche and may serve to help re-associate how Americans perceive homeownership. Following the mortgage crisis, living in moderation has re-entered American rhetoric.[168] This may be only a temporary shift that will fade as the economy recovers, but the current focus on value is the best medicine for potential homeowners assessing whether to buy a home, how much they can afford, and how to best utilize their home. Despite the arguments made in this article to marginalize the benefits of homeownership, owning a home still presents the most direct means of securing a stable, long-term residence and will continue to constitute perhaps the largest part of the American dream.

A forward looking solution to the current homeownership doldrums may come from some form of a Rental Stability Program that expands the terms of rental agreements or possibly could be found through creating a complex housing-risk investment market to enable homeowners to offload the risk of fluctuations in local and regional housing markets to outside investors. But perhaps, the American populace can regain the traditional benefits of homeownership and develop a healthy relationship with debt through a renewed appreciation for affordability and a shift in perception rather than simply a transition in structure. The Obama Administration has indicated a willingness to employ new rhetoric to reshape the modern American's homeownership expectations,[169] and expressed an intention to revisit and make changes to the mortgage finance industry.[170] Along

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[167] Adams, *supra* note 2, at 603; James H. Carr & Kate Davidoff, *Legistlative and Regulatory Responses to the Foreclosure Crisis*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 283, 283 (2008) (citation omitted).

[168] *See* Walter Updegrave, *The Meaning of Living Within Your Means*, MONEY MAG. (Feb. 19, 2009), http://money.cnn.com/2009/02/19/pf/expert/below_means.moneymag/index.htm; Brett Arends, *Advice for the 'Poor Rich'*, WALL ST. J. (Sept. 24, 2010), http://online.wsj.com/article/SB100014240527487041292045755060519190125 96.html; *see* Emily Peck, *Are You Living Within Your Means?*, WALL ST. J. BLOGS (Sept. 24, 2010), http://blogs.wsj.com/juggle/2010/09/24/are-you-living-within-your-means.

[169] *See supra* text accompanying notes 131–37.

[170] *See* Nick Timiraos, *Views of Life After Fannie, Freddie: White House Sketches Three Options For Shrinking U.S. Support of Housing*, WALL ST. J. (Feb. 12, 2011), http://online.wsj.com/article/SB10001424052748703786804576137942242796306.html?mod=WSJ_business_whatsNews ("Administration officials said the process of transitioning to a post-Fannie and Freddie world would

with the Administration's efforts, the pain of the mortgage crisis has caused many to consider the value and affordability of homeownership rather than assume benefits or seek easy profits. Lemmings have their reputation of running off cliffs en mass and groupthink can cloud the thought process of even the most reasonable people,[171] but individuals are capable of making informed decisions if they are able to escape the assumption that homeownership is best suited for every financial situation.

Perception of the family home primarily as a means of securing a long-term residence and secondarily as a device for generating or preserving wealth will go a long way in empowering Americans to no longer "ignore the usual signals of affordability and [begin to] meaningfully consider the debt associated with homeownership."[172] Whether homeownership and certain uses of a home are beneficial for a specific individual requires an analysis tailored to the benefits, costs, and risks of that individual. Whether a potential homeowner is paid by the hour, on commission, or on salary; whether she has a mighty stock portfolio or a small piggy bank on the dresser; and whether she is buying a first home or a fifth investment property, the individual and society will benefit from a change in the social perception of America's favorite illiquid investment.

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take at least five to seven years, in part because the housing market remains too fragile. Many analysts say the process, which includes dismantling, moving, or reassembling the firms' infrastructure, could take even longer.").

[171] *See* Karl S. Kruszelnicki, *Lemmings Suicide Myth*, ABC SCIENCE (Apr. 27, 2004), http://www.abc.net.au/science/articles/2004/04/27/1081903.htm ("One myth deeply entrenched in our language is that of the 'Lemming Suicide Plunge'—where lemmings, apparently overcome by deep-rooted impulses, deliberately run over a cliff in their millions, to be dashed to their deaths on the rocks below, or to drown in the raging ocean. Indeed, this myth is now a metaphor for the behaviour [sic] of crowds of people who foolishly follow each other, lemming-like, regardless of the consequences."); *see* Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1257–61 (2003) (explaining Irving Janis's theory on how high-level small groups use faulty decision making procedures resulting in fiascos).

[172] Although "[t]o blame the people who lent the money for the real estate boom is like blaming the crack dealers for creating addicts," many addicts are able to kick the habit with a change in their perspective. Adams, *supra* note 2, at 589 n.80 (citing Michael Lewis, *The Mansion: A Subprime Parable*, CONDE' NAST PORTFOLIO, Oct. 2008, at 136, 140, *available at* http://www.portfolio.com/culture-lifestyle/goods/real-estate/2008/09/18/Michael-Lewis-Mansion/).