

# Reflections on Elderly Housing in the Baby Boom Era

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When I entered practice during the late 1970s, one of the first tasks I was assigned to work on was the putting together of tax-oriented limited partnerships, the principal business of which was to own and operate subsidized housing for the elderly. As I soon discovered, this was wonderful work for a young associate in a large law firm. I was engaged in an activity that was both profitable for my clients as well as doing a positive social good. The housing we created was designed for the elderly poor and middle class; people who could not, for one reason or another, remain in their earlier homes and needed to be provided with adequate shelter at an affordable price. Through the use of tax incentives to the owner-operators, it was possible to construct such housing and, thereby, provide needed shelter for the elderly. During the course of my foray as a practicing lawyer, I think I must have completed more than twenty-five of these deals.

When I left Wall Street to become an academic it was only natural for me to teach in the area of real estate finance law as well as tax. It was just as natural for me to extend my teaching and research interests to the subject of elderly housing. I spent a great deal of time working on various ways to help the elderly either find new, purpose-built housing or to remain in their own homes after retirement when their finances became more difficult. During this period, I realized that the problem of elderly housing is really a single problem: finances. Further, at the most fundamental level, elderly housing as a social concern was no less problematic than the problem of elderly health care or general economic support for the elderly. The essentially financial nature of the problem was brought home to me one day in the supermarket. A rather elderly woman was in the check-out line in front of me. Amongst her purchases were a variety of dog food in the shape of hamburgers. The check-out person asked the woman what type of dog she had. The elderly woman replied, in a somewhat embarrassed manner, that she did not have a dog. Rather, the dog food was for her, since it was an inexpensive form of meat.

During the early years of my research into the problem of elderly housing, it became very clear to me that this was a subject of great

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importance. The elderly were, in fact, twice damned. First, for many, retirement incomes were simply inadequate to provide the necessities of life, if one included health care and adequate housing. Not only were the poor at risk, but also the middle-class who did not possess adequate pensions. The benefits provided by social security were simply too low to support these elderly. Second, as people would age, housing needs became more difficult to satisfy. The elderly become less able to maintain independent housing and the very architecture of housing for the elderly, particularly the frail elderly, is often different. A colonial style house with multiple floors and stairs may be perfect for a couple in their forties, but impossible for a couple in their seventies. Thus, when discussing elderly housing, one is, in fact, discussing two separate types of problem, both derived from a single source. In many cases, the need is to help the elderly remain in their current homes, such help being both the provision of financial resources to allow them to afford to remain and the physical help necessary to maintain or modify such homes to make them suitable for elderly inhabitants. In other cases, the need is to provide new, purpose-built housing for the elderly, but at a price they can afford.

The early 1980s was a perfect time to be involved in research on the subject of elderly housing. The problem of creating affordable purpose-built elderly housing seemed soluble through the use of tax-oriented housing partnerships of the type I had worked with in practice. If anything, the problem was not finding investors for such housing, but rather finding elderly tenants. The combination of tax-oriented benefits provided by the federal government to the partnerships and housing assistance payments provided to the tenants, meant that even the elderly poor were able to find good new housing designed for their needs. The other problem of providing the financial means to enable the elderly to remain in existing housing, to maintain such housing and to make any necessary modifications to it also seemed on the verge of being solved. A group of lawyers and academics in Madison, Wisconsin were busily perfecting such devices as the reverse annuity mortgage and both state and federal governments were critically interested in improving the lot of the elderly, including their housing by supporting the development of such financial devices. It looked as though the elderly in the United States were going to avoid the difficulties of lacking adequate housing as a result of a combination of public and private initiatives. Thus, I not only found myself writing on the subject, but also consulting with local, state, and federal governmental entities on elderly housing. Obviously, my writing was optimistic on these issues. I was sure that this was one social problem that we, as a society, could solve. Indeed, I was fortunate enough, in the mid-1980s, to be appointed a Housing

Commissioner for Champaign County, Illinois and was, thereby, enabled to put some of my theories into practice.

All this ended, to a large degree, in 1988 when I left Illinois to become the dean of the Syracuse University law school. It has been almost a decade since I have seriously looked at the field of housing for the elderly. In coming back to the subject after so long, I am amazed at how things have changed. Political attitudes are now radically different. The fiscal optimism of the 1980s has given way to the fiscal austerity of the 1990s. The last remnants of the Great Society which survived and, in some cases, even prospered during the Reagan years have disappeared and the proponents of cutting back government welfare programs, including those financed through tax subsidies, are in the political ascendancy. Thus, hopes of increased governmental support for elderly housing, either directly or indirectly, have been all but dashed. Indeed, many of the programs which were so successful in the 1980s have been eliminated in the 1990s. This is, of course, quite a significant change because virtually all of the programs to assure adequate housing for the elderly in America which were proposed and implemented during the 1970s and 1980s were dependent upon such government intervention. The whole notion behind much of what worked was that of a public-private partnership. With the current emphasis on reducing government activities and programs, such partnerships have disappeared.

Perhaps even more significant than the withdrawal of government interest in helping the elderly in their housing needs is the demographic change that is sweeping the United States. The first of the "Baby Boomers" turned fifty this year and many will begin to retire within the next decade. Within two decades many will be in the senior category and within three decades the vast majority will be both senior and retired. Thus, we have seen a drastic cutback in programs to house the elderly just at the time when an unprecedented number of Americans are entering the category of elderly and retired. Of course, this will not be a problem if the Baby Boomers are better prepared financially for retirement than their parents. Unfortunately, just the opposite appears to be true. Most scholars who have studied this group have observed that it is a group in which many have not been saving at a rate that will permit them a comfortable retirement. This fact, combined with the dire predictions as to the fate of the Social Security System within the next three decades, leads to the inevitable conclusion that many of those who reach retirement age during the next several decades face a retirement beset by financial woes. This, in turn, means that either acquisition of new, purpose-built retirement housing or even maintenance and modification of their existing housing may be a serious problem for many of these "soon-to-be" elderly. In short, as I have

come back to look at the field of elderly housing finance in the United States circa 1996, I have come to believe that elderly housing is a catastrophe waiting to happen. The Baby Boom generation has been expert at spending rather than saving; its material expectations have always been high and there is no reason to doubt that they will continue to be so. Many of them face retirement financially unprepared. Many have bought housing utilizing long-term debt, which, in many cases, will require continued high payments well into the retirement years. A recent survey published in a popular magazine, *Men's Health*,<sup>1</sup> is instructive on this point. The average man in the United States, according to this survey, earns just under \$30,000 annually.<sup>2</sup> Further, he is saving less than \$3,000 for all purposes, including retirement.<sup>3</sup> Even with Social Security, this will yield an annual income far below 50% of his present \$30,000. Put differently, our average man will be poor when he retires. What will he do?

To answer this question, it is necessary to return to some basics. First of all, what are the special housing and other needs of the elderly? The first and most fundamental of these, as I have already said, is financial. Retired individuals often lack the financial resources necessary to maintain the same level of lifestyle which they enjoyed during their working years. Indeed, many find that they cannot afford what they would consider even a minimally acceptable lifestyle. In this statement, I am particularly referring to the middle classes. Many individuals, like our hypothetical average man, discussed above, find that their retirement savings provide them with an income which is only a fraction of what they received when they were fully employed. During the past thirty years, for many middle-class individuals, this retirement period reduction in income has been offset by a combination of general inflation in the economy and rapid increases in the value of housing which made their existing homes a valuable asset and potential source of retirement period income. For this to happen, of course, the elderly person had to own a house free and clear of debt which had a substantial value accessible either by sale, in the case of the elderly individual deciding to relocate to new housing, or by use of a device such as the reverse annuity mortgage, in the case of an elderly individual wanting to remain in his existing housing.

To illustrate the above rationale, I will use my own father and mother as examples. They purchased their house in 1968 for approximately \$35,000, of which they financed ninety percent through a thirty-year

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1. Greg Gutfeld, *You can do better! Lifestyle improvements for Men*, MEN'S HEALTH, March 1996, at 98.

2. *Id.*

3. *Id.*

fixed-rate mortgage. Their monthly debt service was a bit more than \$250 per month, a sizable sum for them in 1968. Today, however, this debt service payment is comparatively small and, indeed, is less than the monthly property tax bill. The mortgage will be paid off in two more years. Further, the remaining balance on the mortgage is extremely small and could be easily paid off with sale proceeds. Because of the high inflation of the 1970s and 1980s, my parents have been able to pay off their mortgage in depreciated dollars. Also notable, but typical for their generation, my parents have stayed in the same house for nearly thirty years. And, further, because of the rapid increase in housing values over the past several decades, their house has a market value in excess of \$250,000. Thus, my parents find themselves in a rather fortunate retirement position. The few remaining mortgage payments they must make are, by today's standards, almost nominal. If they decide to sell their house, they can obtain enough in sale proceeds to easily purchase a smaller home; particularly if they are willing to relocate to a less expensive retirement community. They may even be able to realize a tax-free surplus which they can invest to help defray other living expenses. Or, if they choose to stay in their home but need to realize additional income from their home equity, they can obtain a reverse annuity mortgage to achieve this goal.

The point of using my parents as an example is that they are quite typical of their generation. Because of a combination of economic trends and generational savings patterns, they will not need governmental assistance with housing during their elderly years. Like many members of the current senior middle class, housing is not a serious problem for them in retirement. The existence of such devices as reverse annuity mortgages and the large value they have in their present home gives them the choice to remain or move. To my parents, elderly housing problems are problems faced by the elderly poor, not by the middle class. Unfortunately, the scenario which I have sketched out above suggests that this is going to change. Many members of the next generation entering into retirement will not have had the same advantages as my parents' generation. During the past decade, inflation has been brought under control. Housing prices, while still rising nationwide, are doing so much more slowly. Furthermore, the Baby Boomers have tended, it seems from most of the literature, to have had higher expectations of housing and have tended to "trade-up" their housing far more frequently than did their parents. Thus, it seems likely that many members of this generation will not find themselves in the same fortunate position that their parents enjoyed upon retirement. Many will still have substantial mortgages and lack the home equity their parents enjoyed in retirement. Further, these middle class individuals will be, I would suspect, generally unwilling to move into

government-subsidized elderly housing even when it is available. In short, I am suggesting that it seems to me the problem of elderly housing finance is going to move away from being focused upon the poor and marginally poor and work its way up fairly far into the middle class in the coming decades. Further, the types of solutions available in the 1970s and 1980s will not be available to either the elderly poor or the elderly middle class because of changing generational habits and changing politics. If this is true, then any answer to the problem of what to do about elderly housing must take a global view of the problem.

#### PRE-RETIREMENT SAVINGS INCENTIVES

Perhaps the most important strategy we may use to solve the potential problems of elderly housing in the next several decades is to provide enhanced opportunities for pre-retirement savings now. As I have already stated, in essence, the problem of elderly housing is financial. Given enough money, it can be solved. What we must now assume, however, in a way which we did not a decade ago, is that government (federal, state or local) is unlikely to provide the financial assistance, either directly through payments to the elderly, or indirectly through tax incentives. This means that the solution must lie within the private sector and, probably, within the Baby Boom generation itself. Given these facts, the possible universe of solutions is relatively small. The savings rate of the Baby Boom generation is notoriously low. Further, many members of the Baby Boom generation will have changed jobs several times during their working careers, often to the detriment of their pension plans. Additionally, it is highly unlikely that pension plans can be relied on to provide the funds necessary to purchase adequate retirement housing, since their primary purpose must be to provide basic living costs during this period. In light of this, I would suggest that we find a way to increase individual savings for retirement and do so in such a way that the federal government not be asked to create incentives for such savings that cost other taxpayers significant sums of money. The difficulty with this plan is simple.

The primary incentive that we are used to using is the tax incentive. We provide favored tax treatment for a variety of retirement savings schemes, such as IRAs, 401(k) plans, and qualified retirement plans in general. These tax incentives tend to be rather expensive and are born by the entire taxpaying public. Expansion of such incentives seems unlikely given the current political climate. Of course, we could expand these incentives and then recover the present cost of them by more highly taxing pension payments when they are withdrawn during retirement. While such an expansion might increase the present savings

rate, it is impracticable because it would recapture those savings just when they are most needed, upon retirement. There may be, however, a special case to be made for creating special incentives for savings to be used for retirement housing costs. When retirement funds are used to purchase and maintain owner-occupied housing, then there is created an asset, the home, which might be reached by the government after retirement to recapture the costs of the incentive. One solution favored by some commentators is to have the federal government seriously consider establishing a new form of Individual Retirement Account, which would provide for tax deductible contributions and tax-free compounding of invested funds which could be used for the sole purpose of acquiring housing by individuals who have reached a predetermined age of retirement (perhaps 65). These retirement housing accounts ("RHAs") would be available to all individuals without income limits. The proceeds of these accounts could be used only for the purpose of acquiring retirement housing, and, if so used, would be exempt from taxation. In order to lessen the burden on the Treasury, proceeds from the sale or other disposition of such housing upon the death of the owner could be taxed at a special, higher than normal rate, since there would be no need for these funds to be included in the owners' estates. In effect, the tax benefits provided to the elderly would be recaptured upon death and sale of the housing. In cases where a decedent's survivors wished to retain this housing, a special estate tax could be levied in lieu of the tax on the sale of such housing. Of course, it would be necessary to provide that these taxes would not become due, in the case of married couples, until the death of the surviving spouse.

The primary advantage of establishing such RHAs is that such a legislative scheme would provide additional incentives for pre-retirement savings to be utilized for post-retirement housing. In effect, we could eliminate some portion of the problem of financing elderly housing by having this financing provided for well before the individuals affected became elderly. Of course, there would be some significant cost to the Treasury in such a scheme. For the most part, however, such costs would be recaptured by the special taxes on sale or testamentary transfer. Frankly, however, I wonder whether those individuals with low savings rates would respond to such a scheme. If they did not, its value would be minimal.

#### STAYING IN PLACE: THE WAVE OF THE FUTURE

Many of the assumptions which underlie the work done on elderly housing in the 1980s may, as I have already suggested, no longer be true. For example, the reverse annuity mortgage concept took it for

granted that we would have a large number of elderly individuals, particularly women, who would be retired, own their homes outright without debt, and would have few other monetary resources on which to live. The idea was to permit them to "unlock" the equity in these homes to provide a source of cash flow upon which to live. In the coming decades, it is likely that this profile of the elderly retiree may change. As I have said, many Baby Boomers will still be paying off mortgages on their housing and, therefore, may not have all that much equity to unlock. Further, the slowing of appreciation in real estate prices (and the depreciation in values in many areas) will reduce this potential housing equity even further. At the same time, many members of the Baby Boom generation will live longer and be healthier longer than their parents. Thus, what we may well find occurring is that Baby Boomers will simply be unable to retire as early as their parents and that they will not be able to leave their existing homes. In effect, we may see an increasing trend to staying in place by more and more of the elderly population.

The good news is that the various legislative initiatives passed during the last several years have outlawed age discrimination and abolished, for most people, mandatory retirement ages. Thus, many individuals who find that they lack adequate resources to retire and to relocate to retirement housing may well discover that their best choice is to continue to work so long as they can and to stay in their homes. Ultimately, this may be the most widespread solution to the problem of elderly housing for the Baby Boom generation. Since money is the general solution to the problem, many may simply defer retirement until they feel they can afford to retire, if ever. If this scenario is accurate then we may need to reorient our thinking about retirement and make certain legislative changes to accompany this reorientation.

First and foremost, I think we must revisit the current statutory and contractual rules that require individuals to begin drawing their pensions no later than age seventy and one-half or penalize them for not doing so. More and more individuals may not be able to retire at seventy. Many will also be quite healthy and able to work for years beyond this age. Many of these individuals may also have inadequate retirement savings at age seventy. To force these individuals to draw down their savings at this age is foolish. They would be far better off if they could (1) continue to save for retirement beyond age seventy and (2) concentrate their retirement assets and use them exclusively for that period after which they are no longer able to work. To my mind, there is no longer any rational justification for forcing retirement savings to be distributed at any set age. Indeed, it is not simply the potential fiscal inability to retire of many Baby Boomers that will tend to keep them working longer. The predicted collapse of the Social Security System



must play a role, for I believe the solution to that problem will be simply to defer the age at which individuals can draw Social Security payments to seventy or beyond. Further, the failure of the federal government to pass a universal health care program and the subsequent legislation limiting medicare benefits for the elderly will convince many Baby Boomers to stay employed in order to maintain their health plan coverage.

Thus, it seems to me that elderly housing for the Baby Boom generation may not be a serious problem. If I am right, it will not be a serious problem because this generation will be forced to continue to work far beyond the time when their parents had already retired. In effect, housing for the elderly will be less of a problem because the elderly will cling to their employment out of financial necessity. We may be able to affect this scenario somewhat by finding means, such as greater tax incentives to retirement savings, which would mitigate this financial need for some individuals. I believe, however, that it is likely that the combination of smaller, less generous government, and the larger, less savings-oriented Baby Boomers may well lead to a fundamental social shift away from retirement and back to a society where the elderly must work until they are incapacitated or die. Of course, such a fundamental social shift will have enormous implications for our society and the resulting legal changes such a shift will necessitate will be far more sweeping than anything done in the past several decades about housing the elderly.

If we do make these changes, and thereby accommodate, if not discourage, retirement, we will still have several housing specific issues to consider. First is the question of space. Many of these individuals continuing to work into their seventies will find that they are overhoused. Second, many of these individuals will find that although they remain healthy, the housing that they wanted in their fifties and sixties may not be the housing they want in their seventies. They may well want to reduce maintenance, for instance. Third, some may also find that they desire or even require special amenities which their housing lacks. If they are to stay in place as they continue to work and save for retirement, how can we assist them in making their housing more desirable and appropriate to their ages? All of these questions will arise as the time draws nearer for the next generation to retire.

The problem of housing for the Baby Boom elderly is serious, but it is not insurmountable. We must recognize it for what it is: A problem, first and foremost, of finances. The about-to-be elderly can no longer count on their government to provide assistance where their own resources have fallen short. They must instead look to self-made solutions. They must save money more aggressively than they are presently. They must buy homes more conservatively, with an eye to

their long-term needs, and they must plan to stay put. Finally, they must not count on retirement at a magic, predetermined age; instead, they should consider working as long as good health permits. Congress can help this necessary change in thinking with adoption of some focused incentive plans. Ultimately, however, the answers to the questions posed by the prospect of Baby Boomers' retirement will be found within.