

the affordability protections that implement the governing housing program.

An evaluation of five such approaches in this two-part article demonstrates that successful efforts must observe six key principles:

- meeting short-term and long-term physical and financial needs;
- reinvesting excess proceeds back into affordable housing;
- guaranteeing affordability for current and future tenants;
- weeding out poorly performing owners and managers;
- providing for tenant participation in the decision-making process; and
- ensuring clarity in the governing law and regulations.

Passage of Congressman Frank's draft omnibus preservation bill would be a significant step in the right direction for several of the types of properties reviewed here. Other innovative long-term measures should be explored as well, such as providing stronger incentives to transfer these projects to mission-driven nonprofits or to local land trusts, in order to provide greater assurances of long-term public benefit from responsible recapitalization.<sup>20</sup> By combining the lessons learned from prior approaches with new innovative proposals, this important housing stock can remain a viable and valuable asset long into the future. ■

## The Importance of Stable Housing for Formerly Incarcerated Individuals

Each year more than 725,000 people leave state and federal prisons.<sup>1</sup> An additional 230,000 people leave county jails every week.<sup>2</sup> Formerly incarcerated individuals struggle to secure employment, obtain medical care and avoid substance abuse. According to criminal justice officials, however, finding housing is the biggest challenge faced by individuals returning to the community.<sup>3</sup> This article will identify the barriers to accessing stable housing, describe the housing arrangements of individuals returning to the community and explore the relationship between residential instability and recidivism.

### Obstacles to Stable Housing

A number of institutional and legal barriers prevent formerly incarcerated individuals from finding stable housing after release. Private housing represents 97% of the total housing stock in the United States.<sup>4</sup> Due to soaring prices, however, private housing is simply out of reach for many formerly incarcerated individuals living in urban areas.<sup>5</sup> Moreover, most landlords conduct criminal background checks on prospective tenants.<sup>6</sup> Given the short supply of affordable housing, landlords can afford to deny housing to applicants with criminal records. Screening for sex offenders is especially prevalent.

Federally assisted housing is the only option for many people leaving correctional facilities. Harsh admission

<sup>1</sup>HEATHER C. WEST & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2007 (2008), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf>.

<sup>2</sup>AMY L. SOLOMON ET AL., LIFE AFTER LOCKUP: IMPROVING REENTRY FROM JAIL TO THE COMMUNITY XV (2008), available at <http://www.jjay.cuny.edu/centers/institutes/pri/pdfs/Final%20Life%20After%20Lockup.pdf>.

<sup>3</sup>CATERINA GOUVIS ROMAN & JEREMY TRAVIS, THE URBAN INST., TAKING STOCK: HOUSING, HOMELESSNESS, AND PRISONER REENTRY 2 (2004), available at [http://www.urban.org/UploadedPDF/411096\\_taking\\_stock.pdf](http://www.urban.org/UploadedPDF/411096_taking_stock.pdf).

<sup>4</sup>JOAN PETERSILIA, CALIFORNIA POLICY RESEARCH CENTER, UNDERSTANDING CALIFORNIA CORRECTIONS 69 (2006).

<sup>5</sup>See NAT'L LOW INCOME HOUS. COALITION, OUT OF REACH 2009, <http://www.nlihc.org/oor/oor2009/data.cfm?getstate=on&getmsa=on&msa=2243&state=CA>. For example, the fair market rent for a one-bedroom apartment in Oakland, California, is \$1,093.

<sup>6</sup>See Maria Foscarinis & Rebecca K. Troth, *Reentry and Homelessness: Alternatives to Recidivism*, 39 CLEARINGHOUSE REV. 440, 446 (2005). All 50 states allow private landlords to screen an applicant for a criminal record. *But see* Madison, Wis. Code of Ordinances, Ch. 39.03(1) and (4) (Renumbered by Ord. 12,039, Adopted 2-17-98), available at <http://www.municode.com/resources/gateway.asp?pid=50000&sid=49>, Urbana, Ill, Code of Ordinances, Ch. 12 Art. III. Div. 1, §§ 12-37 and 12-64, (Ord. No. 7879-92, § 1(29), 4-24-79; Ord. No. 9798-49, § 1, 10-6-97), available at <http://www.city.urbana.il.us/>. Both Madison, Wisconsin and Urbana, Illinois passed ordinances that prevent discrimination on the basis of an arrest or conviction record.

<sup>20</sup>Exit tax relief is one such important proposal that would help address the issue of many private owners being unwilling to sell due to the steep capital gains taxes they would incur as a result of having taken prior significant depreciation deductions. Many owners thus hold onto their property to secure the step up in basis that occurs upon transfer at death, thus eliminating both the tax revenue to the government, as well as potentially failing to recapitalize the property. Exit tax relief would eliminate this tax burden in cases of a sale to a preservation-motivated purchaser.

policies, however, prevent many people with criminal records from accessing federally assisted housing. Public housing authorities (PHAs) must reject lifetime registered sex offenders and individuals convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing.<sup>7</sup> In addition, federal law permits PHAs to deny admission to applicants with histories of violent criminal activity, drug-related criminal activity, or criminal activity that may threaten the health, safety or peaceful enjoyment of the premises by other residents.<sup>8</sup> The statute directs PHAs to consider criminal activity that occurred within a “reasonable time” prior to the admission decision.<sup>9</sup> Nevertheless, some PHAs consider criminal activity that occurred as long as 10 years prior to the admission decision.<sup>10</sup>

### Housing Arrangements After Release

Because of the barriers to obtaining stable housing, many formerly incarcerated individuals end up in unstable housing arrangements. A total of 10% of parolees are homeless nationwide.<sup>11</sup> In large urban areas such as Los Angeles and San Francisco, 30% to 50% of parolees are homeless.<sup>12</sup> A large portion of formerly incarcerated individuals rely on family members to provide shelter after release.<sup>13</sup> Some family members, however, set limits on the amount of time that a returning relative can stay.<sup>14</sup> Consequently, formerly incarcerated individuals end up “shuttling” between relatives, friends, shelters and the street.<sup>15</sup> A study of men returning to the metropolitan

Cleveland area reveals the extent of the shuttling:<sup>16</sup> 63% of the study participants reported living in two, three, four, or five places within the first year after release.<sup>17</sup> At the end of the first year, 46% of the men referred to their housing arrangements as temporary and expected to move within a few weeks or months.<sup>18</sup> Conversely, a small portion of formerly incarcerated individuals manage to secure their own apartment or house after release. In a study of men returning to Chicago, only 19% of the study participants reported living in their own place 16 months after release.<sup>19</sup>

### Relationship Between Unstable Housing and Recidivism

Ultimately, many individuals are not able to avoid re-incarceration. In California, for example, 79% of parolees return to prison or abscond.<sup>20</sup> Research suggests that securing stable housing is crucial to successful re-entry. The study of men returning to the Cleveland metropolitan area found that obtaining stable housing within the first month after release inhibited re-incarceration.<sup>21</sup> As stated in an Urban Institute study, “The importance of finding a stable residence cannot be overestimated: men who found such housing within the first month after release were less likely to return to prison during the first year out.”<sup>22</sup> The study of men returning to Chicago reinforces the idea. Study participants who reported living in their own apartment or house two months after release faced a lower risk of re-incarceration.<sup>23</sup>

Moreover, a study of over 40,000 individuals returning to New York City from state correctional facilities reveals the correlation between shelter use and risk of recidivism.<sup>24</sup> Individuals who entered a homeless shelter within the first two years after release faced a higher risk of re-incarceration.<sup>25</sup> Perhaps more significantly, individuals who reported living in a shelter before incarceration faced a higher risk of both shelter use after release and re-incarceration.<sup>26</sup> The figures suggest that “the crossing

<sup>7</sup>42 U.S.C.A. §§ 1437n(f), 13663 (Westlaw Oct. 27, 2009). The ban on individuals convicted of manufacturing or producing methamphetamine does not apply to project-based Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, or USDA housing. The ban on lifetime registered sex offenders does not apply to USDA housing.

<sup>8</sup>42 U.S.C.A. § 13661(c) (Westlaw Oct. 27, 2009).

<sup>9</sup>*Id.*

<sup>10</sup>See San Francisco Housing Authority Admissions and Continued Occupancy Plan 2008, available at <http://www.sfha.org/about/pha/pdf/2008ACOP.pdf>.

<sup>11</sup>LITTLE HOOVER COMM’N, BACK TO THE COMMUNITY: SAFE & SOUND PAROLE POLICIES 39 (2003).

<sup>12</sup>*Id.*

<sup>13</sup>See Nancy La Vigne et al., The Urban Institute, CHICAGO PRISONERS’ EXPERIENCES RETURNING HOME 16 (2004), available at [http://www.urban.org/UploadedPDF/311115\\_ChicagoPrisoners.pdf](http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf). In a study of men returning to Chicago, 88% of the men reported living with family members or intimate partners four to eight months after release.

<sup>14</sup>TRACEY L. SHOLLENBERGER, THE URBAN INST., WHEN RELATIVES RETURN: INTERVIEWS WITH FAMILY MEMBERS OF RETURNING PRISONERS IN HOUSTON, TEXAS 9-10 (2009), available at [http://www.urban.org/UploadedPDF/411903\\_when\\_relatives\\_return.pdf](http://www.urban.org/UploadedPDF/411903_when_relatives_return.pdf). The study followed family members of men and women returning to Houston. Of the family members who provided housing to a returning relative, over half imposed limits on the duration of the housing arrangements. Some of the study participants said that the returning relative could stay until he or she found an apartment or a job. Others said that the returning relative could stay as long as he or she did not use drugs or engage in criminal activity.

<sup>15</sup>JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 219 (The Urban Inst. Press 2005).

<sup>16</sup>CHRISTY A. VISHER & SHANNON M.E. COURTNEY, THE URBAN INST., ONE YEAR OUT: EXPERIENCES OF PRISONERS RETURNING TO CLEVELAND 1 (2007), available at [http://www.urban.org/UploadedPDF/311445\\_One\\_Year.pdf](http://www.urban.org/UploadedPDF/311445_One_Year.pdf).

<sup>17</sup>*Id.* at 3.

<sup>18</sup>*Id.*

<sup>19</sup>JENNIFER YAHNER & CHRISTY VISHER, THE URBAN INST., ILLINOIS PRISONERS’ REENTRY SUCCESS THREE YEARS AFTER RELEASE 3 (2008), available at [http://www.urban.org/UploadedPDF/411748\\_reentry\\_success.pdf](http://www.urban.org/UploadedPDF/411748_reentry_success.pdf).

<sup>20</sup>LITTLE HOOVER COMM’N, *supra* note 11, at 55.

<sup>21</sup>VISHER & COURTNEY, *supra* note 16, at 11.

<sup>22</sup>*Id.*

<sup>23</sup>YAHNER & VISHER, *supra* note 19, at 3.

<sup>24</sup>Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 CRIMINOLOGY & PUB. POLICY 139 (2004).

<sup>25</sup>*Id.* at 147.

<sup>26</sup>*Id.* During the first two years after release, roughly 11% of the study participants entered a homeless shelter and 33% returned to prison. Among the study participants with a record of shelter use prior to incarceration, however, roughly 45% entered a homeless shelter and 42% returned to prison.

over from incarceration to homelessness, and vice versa, threatens to transform spells of incarceration or homelessness into more long-term patterns of social exclusion.<sup>27</sup> Directing housing assistance to individuals with a history of residential instability before incarceration could reduce the rate of homelessness and re-incarceration among the re-entry population.<sup>28</sup>

## Conclusion

Many formerly incarcerated individuals end up in unstable housing arrangements after release. As the research above indicates, stable housing is a vital component of effective re-entry. By working to reduce the barriers that prevent formerly incarcerated individuals from accessing stable housing, advocates can reduce recidivism and improve public safety and community wellbeing. ■

## Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,<sup>1</sup> Lexis,<sup>2</sup> or, in some instances, the court's website.<sup>3</sup> Copies of the cases are *not* available from NHLP.

### Housing Choice Voucher Program: Police Report Insufficient to Establish Drug-Related Criminal Activity

*Weekes v. Boston Hous. Auth.*, No. 09H784CV00531 (Mass. Hous. Ct. Dec. 10, 2009). In terminating a voucher tenant's assistance, a hearing officer relied on a police report stating that officers seized clear plastic bags containing a substance "believed to be Class D marijuana" from the tenant's apartment. The court found that the statements in the police report, standing alone, were insufficient to establish by a preponderance of the evidence that the substance seized from the tenant's apartment was marijuana. The court therefore found that the hearing officer's conclusion that the tenant allowed her apartment to be used for drug-related criminal activity in violation of her Section 8 lease was legally erroneous. The court vacated the hearing officer's decision and ordered the housing authority to reinstate the tenant's voucher.

### Housing Choice Voucher Program: Evidence Supported Hearing Officer's Finding that Tenant Was Evicted

*Morford-Garcia v. Metro. Council Hous. & Redev. Agency*, 2009 WL 4909435 (Minn. Ct. App. Dec. 22, 2009) (unreported). An owner filed an eviction action against a voucher tenant. The parties later entered into a settlement agreeing to a mutual termination of the lease. The settlement stated that if the tenant violated its terms, the landlord would be entitled to an immediate writ of recovery. The tenant violated the settlement, and a writ of recovery was issued but later canceled. The tenant argued that the record did not support the hearing officer's finding that she was evicted. The court disagreed, finding that an eviction judgment must have been entered in the owner's favor, or else a writ of recovery would not have been issued. The court also found that there was substantial evidence to support the

---

<sup>27</sup>*Id.* at 142.

<sup>28</sup>*Id.* at 151; *see also* CORP. FOR SUPPORTIVE HOUS., GETTING OUT WITH NOWHERE TO GO: THE CASE FOR RE-ENTRY SUPPORTIVE HOUSING, *available at* [http://www.csh.org/\\_data/global/images/ReEntryBooklet.pdf](http://www.csh.org/_data/global/images/ReEntryBooklet.pdf). Research shows that supportive housing—permanent affordable housing linked to services—works to break the cycle of homelessness and incarceration.

---

<sup>1</sup><http://www.westlaw.com>.

<sup>2</sup><http://www.lexis.com>.

<sup>3</sup>For a list of courts that are accessible online, see <http://www.uscourts.gov/links.html> (federal courts) and <http://www.ncsc.dni.us/COURT/SITES/courts.htm#state> (for state courts). See also <http://www.courts.net>.