

# Redefining the American Dream

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**Date :** March 8, 2016

Andrea J. Boyack, *American Dream in Flux: The Endangered Right to Lease a Home*, 49 **Real Prop. Tr. & Est. L. J.** 203 (2014), available at [SSRN](#).

The “American Dream” referred to by [Andrea Boyack](#), an Associate Professor of Law at Washburn University School of Law, is homeownership. As first year Property students are taught, the dream of homeownership has its hallowed roots in Thomas Jefferson’s conviction that widespread ownership of real property was a predicate for a functioning democracy. “The small landowners,” Jefferson wrote, those with “a little portion of land” are “the most precious part of a state.”<sup>1</sup> The idea that the government should encourage more people to own “a little portion of land”—first farms and now single family homes—has inspired public policy since the Revolution.

Boyack does not argue that the American Dream is dead, or that promoting homeownership is an illegitimate policy goal. Instead, she convincingly argues that by myopically focusing on increasing homeownership and owner occupancy, a combination of public land use controls, private land use controls, and federal policies are undermining “important public concerns.” (P. 299.)

An important part of the puzzle, Boyack acknowledges, are widespread private restrictive covenants that prevent homeowners from renting. These covenants effectively bar renter households from many communities, particularly those in growing suburbs.

Much has been written about common interest communities and restrictive covenants in the residential context. The chief contribution that Boyack makes to the literature is her well-reasoned argument that restrictive covenants limiting home rentals do not express a naked “private neighborhood preference[s] for owner occupancy.” (P. 212.)

Instead, Boyack argues, “Government and quasi-government policies actively encourage covenant-based leasing prohibitions, both as a reflection of owner occupancy and homeowner policies and as an underwriting strategy.” (P. 212.) Underwriting standards “crafted and imposed” by the Federal Housing Authority, Fannie Mae, and Freddie Mac “promote[e] owner occupancy as a property value enhancer ... [and] punish would-be renters and landlords as well as entire communities that become majority-renter-occupied by denying them access to mortgage capital.” (P. 212.)

This argument is significant for two reasons. First, Boyack contends that this revelation shows why much of the deference granted to these restrictive covenants by courts is undeserved. Second, Boyack argues that a public policy that focuses on “owner occupancy as an end in itself ... [rather than] legitimate lender concerns such as property maintenance and community fiscal health” (p. 299) promotes broader social harms. Private covenants and federal underwriting standards that collaborate to segregate renter households from owner households undermine housing affordability and accessibility and further entrench racial segregation.

Boyack provides a thorough overview of the private and public prohibitions on leasing in privately government communities. She also discusses the alleged costs and benefits of such restrictions for both communities and homeowners.

Boyack concludes that “covenant-based prohibitions on leasing” create a variety of costs: “(1) to the property owner who cannot rent out the home, (2) to the community who is adversely impacted by unoccupied and financially distressed properties, (3) to the would-be tenant who cannot reside in the community, and (4) to the public in general that suffers decreased rental housing affordability and persistent, insidious housing segregation.” (P. 291.) At the same time, she acknowledges that “most of the asserted purposes for no-lease covenants appear to be legitimate” (p. 293) and are designed to achieve “better-maintained housing, community harmony, and financeability due to compliance with FHA and GSE underwriting mandates.” (P. 291.)

Boyack proposes to balance these costs and benefits through “more targeted community restrictions and requirements” that focus on “property use rather than property users.” (P. 291.) In particular, Boyack argues that the interests of neighbors and lenders could be protected through community covenants that regulate property maintenance, occupant behavior, and contributions to the upkeep of the community. (P. 297.)

Although Boyack does not expressly make this argument, her article supports the proposition that we have been mis-defining the American Dream as ownership rather than occupancy. The number of renter households in the United States has increased significantly since the 2008 Financial Crisis, and households may choose to rent for a myriad of reasons. As a result, although renters as a group are more likely than homeowners to be young, unmarried, female, and non-white, “[i]n terms of age, income, and transience, a renter of a single-family home is a closer match with single-family homeowners than with apartment dwelling renters.” (P. 208.)

That is certainly true for my family, which is a renter household in a neighborhood of single-family homes. When my husband, two sons and I moved to Winston-Salem six years ago, we had no interest in purchasing a home or living in a multi-family development. We found our options were therefore significantly limited by the legal structures identified by Boyack, particularly in parts of town with newer community amenities and highly-rated public schools. We were fortunate to be able to afford to rent a home in an older neighborhood that served our needs. Many renter households are not so fortunate. The reforms proposed by Boyack will allow millions of households to grab a piece of the American Dream, even if they cannot afford to own their own home.

1. Dice Robins Anderson, *Notes and Suggestions: Jefferson and the Virginia Constitution*, **American Historical Review**, 752 (1916).

Cite as: Tanya Marsh, *Redefining the American Dream*, JOTWELL (March 8, 2016) (reviewing Andrea J. Boyack, *American Dream in Flux: The Endangered Right to Lease a Home*, 49 **Real Prop. Tr. & Est. L. J.** 203 (2014), available at SSRN), <https://property.jotwell.com/redefining-the-american-dream/>.