

Building Capacity Through Community Lawyering: Circumstances of the Leaders, Small Community Associations, and Their Attorneys

Robin Jacobs

Contents

Introduction	29
I. Background	31
II. The Significance: Why Community Associations Matter and How Community Lawyers Aid in Their Efforts to Matter More....	34
A. Checkered Record of Community Organizations.....	35
B. Bridging Divides, Bringing Together	36
C. Civic Engagement, Amplifying, and Advocacy.....	38
D. Resilience.....	40
III. The Squeeze	41
A. Demographic Shifts	41
1. Aging Populations.....	42
2. Income Segregation and Scarcity of Skill Sets.....	43
B. Shrinking Cities.....	45
C. Falling Funding.....	47
D. Rise in Complexity of Regulatory Systems.....	48
IV. The Solutions	50
A. Retention and Recruitment of Leadership	50
B. Strengthening While Shrinking	52
C. Flexible Funding	53
D. Simplifying the System and Uniting Across Silos.....	54
V. Conclusion	56

Introduction

Community associations are essential to a vibrant, engaged democracy, but they are struggling to survive. They need leaders and community lawyers to continue their vital work. Without the ability to make decisions democratically, self-govern, delegate tasks, speak with a united voice,

Robin Jacobs (robinj@communitylaw.org) is Director, Strategic Legal Services Projects, Community Law Center; Adjunct Professor, University of Maryland Francis King Carey School of Law Clinical Program. I would like to thank Brenda Bratton Blom and Barbara Bezdek, as well as NYU Clinical Law Review Workshop reviewers Angela Burton, Brenda Smith, Anika Singh Lemar, John Mangin, and Valerie Schneider for their feedback and encouragement of this article.

organize and advocate, collaborate with and engage stakeholders, and recruit and develop new leaders, and without flexible funding to follow through with the work of the organization's mission,¹ nonprofit community associations,² especially those in distressed neighborhoods, struggle to survive. Among nonprofit community associations, this organizational capacity, built with the help of community lawyers, determines effectiveness.³ The loss of power and engagement of distressed communities affects not only the people in that neighborhood, but ripples outward in many different forms, including civic disengagement, isolationism, decreased resilience, and increased health disparities.⁴

Community lawyering employs a systematic approach to revitalizing communities utilizing problem-solving techniques to meet community needs.⁵ Community lawyering both depends on, but can also help build, organizational capacity. This article, informed by client and community lawyer experiences in predominantly low-income neighborhoods of Baltimore, calls for a resurgence of community groups by bolstering their capacity and for a resurgence of community lawyering to help build that capacity.

The first part of the article discusses the contextual background of community leaders and their lawyers, the second part addresses why community associations are important, and the third discusses the challenges they must overcome. The final part of the article discusses both the limits and the potential for community lawyers and others to revitalize faltering community groups. Throughout the article, I weave in experiences from the

1. For the purposes of this article, I call these elements as a whole, nonprofit capacity or organizational capacity; those terms are used interchangeably.

2. For the purposes of this article, community associations (also sometimes called neighborhood associations) refer to voluntary organizations composed of and led by residents and other stakeholders, including churches, businesses, and other nonprofits, of a geographically defined area. For a more formal and complete taxonomy of community group clients and types of community lawyering representation, along with the ethical issues raised by such representation, see, e.g., Paul R. Tremblay, *Counseling Community Groups*, 17 CLINICAL L. REV. 389, 407–50 (2010) (discussing counseling of joint clients, well-structured group clients, and loosely structured group clients); Susan D. Bennett, *Creating A Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLINICAL L. REV. 67, 92 (2006) (exploring options for collective representation of community-based organizational clients).

3. BUILDING CAPACITY IN NONPROFIT ORGANIZATIONS 5 (Carol J. De Vita & Cory Fleming eds., 2001), available at http://www.urban.org/UploadedPDF/building_capacity.PDF.

4. *Id.* at 2.

5. Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 362–63 (2008).

Community Law Center's work⁶ representing community groups in low-income neighborhoods as well as from a reflective conversation with two long-time community leaders, Joyce Smith and Sandra Coles, whose experiences and the organizations they lead exemplify some of the trends discussed in this article.⁷

I. Background

Joyce Smith grew up in Southwest Baltimore City and moved back in the late 1980s when homeownership opportunities became available by an affordable housing developer associated with the Enterprise Foundation.⁸ She saw an opportunity to move back to be close to relatives in the neighborhood. She became a community leader because "you don't just buy a house," she explains, "you buy a neighborhood."⁹ In the mid-1990s, she became the executive director of Franklin Square Community Association, Inc. and then led Operation ReachOut SouthWest, Inc. (OROSW), which was the first time "people asked us how to make a better neighborhood."¹⁰ At the time, the area was plagued by the drug trade and hopelessness, but Joyce was always a dreamer and knew she could make a difference.¹¹

Sandra Coles moved to the Greater Greenmount area in the 1980s when she and her husband found a home they could afford near the Roy Rogers restaurant where they first started dating.¹² After learning a lot as an employee at the local community development corporation, People's Home-steading Group, Inc. (PHG), Sandra Coles helped form a new organization, Greater Greenmount Community Association, Inc. (GGCA) in 2006 to bring together two neighborhoods, Barclay and East Baltimore–Midway.¹³ She knew the community needed someone compassionate and understanding; as someone who shared their background, Sandra Coles knew she could engage residents to make the neighborhood a better place.¹⁴

Along the way, both organizations built capacity and achieved advocacy goals with the assistance of counsel from Community Law Center,

6. In addition to the author's experience, this article includes reflections gathered in an interview with Anne Blumenberg, founder of Community Law Center, Inc., in Baltimore (Jan. 27, 2015) [hereinafter Interview with Anne Blumenberg].

7. Interview with Joyce Smith, president, Operation ReachOut SouthWest, Inc., in Baltimore (Aug. 2, 2013) [hereinafter Interview with Joyce Smith]; Interview with Sandra Coles, past president, Greater Greenmount Community Association, Inc., in Baltimore (Aug. 5, 2013) [hereinafter Interview with Sandra Coles].

8. Interview with Joyce Smith, *supra* note 7.

9. *Id.*

10. *Id.*

11. *Id.*

12. Interview with Sandra Coles, *supra* note 7.

13. *Id.*

14. *Id.*

a nonprofit legal services organization that, since 1986, has specialized in serving community associations, especially those in low-income neighborhoods of Baltimore City. Lawyers at Community Law Center focus their practices at the intersection of community organizing and the law. While often utilizing traditional lawyering techniques—such as contract drafting and negotiation, drafting and revising organizational documents for nonprofits, and applying for 501(c)(3) status—Community Law Center also crafts creative legal approaches to meet community needs where those needs have not traditionally been met by the legal system. For example, in the context of communities struggling with vacant properties, community lawyers found ways for their clients to utilize receivership¹⁵ and nuisance law¹⁶ to address these challenges.

In comparison to the rest of the nonprofit sector engaged in community development,¹⁷ community associations like those led by Joyce Smith and Sandra Coles fall on the very small end of the nonprofit spectrum. Often managing on miniscule or even nonexistent budgets,¹⁸ these groups typically operate solely on volunteer support. They rarely employ paid staff. Meetings typically take place in church basements, local schools, anchor institutions, or one of the few remaining community centers; very rarely does the organization lease or own its own office space.

The context in which OROSW and GGCA operate differs importantly from community groups with a bounty of nonprofit capacity in predominantly higher-income neighborhoods. There, residents may enjoy special benefits tax districts, homeowners' associations, or even a private foundation to protect their communal interests and fund projects that benefit the neighborhood.¹⁹ In those communities, attorneys abound as residents and legal formalities and advocacy come almost naturally; the aid of an

15. James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. AFFORDABLE HOUSING & CMTY. DEV. L. 210 (2004).

16. MD. CODE ANN., REAL PROP. § 14-123.

17. The sector includes community development corporations, housing cooperatives, and faith-based organizations. SUSAN D. BENNETT, BRENDA BRATTON BLOM, LOUISE A. HOWELLS & DEBORAH S. KENN, COMMUNITY ECONOMIC DEVELOPMENT LAW 36–38, 87–90 (2012).

18. Over 714,000 of 1.6 million nonprofits in 2010 oversaw budgets smaller than \$25,000. Katie L. Roeger, *Small Nonprofit Organizations*, 23 CHARTING CIVIL SOCIETY 1 (Urban Inst. Aug. 2010). It is difficult to know much about the characteristics of these small nonprofits, *id.* at 5, including what percentage of those organizations are community associations. This is complicated by published reports that include homeowners associations and housing cooperatives, which differ from community associations as defined in this article. See, e.g., STATISTICAL REVIEW 2012, FOUND. FOR CMTY. ASS'N RESEARCH, <http://cairf.org/foundationstatsbrochure.pdf>.

19. See, e.g., ROLAND PARK, BALTIMORE, MARYLAND, <http://www.rolandpark.org/>. Roland Park's median household income is nearly \$97,000, more than twice the citywide median income in 2011. *Vital Signs: Community Statistical Areas*,

external community lawyer is rarely required.²⁰ These neighborhoods generally enjoy both wealth and political power and face less resistance and advocacy challenges as a result.²¹

In this regard, OROSW and GGCA typify strong community groups that endure against some of the odds²² described in this article because of their great organizational capacity, built in part through strong relationships with community lawyers. Both groups aim to improve the quality of life of all residents through revitalization of the neighborhood. With the help of community lawyers, they represent the more formally organized end of the spectrum of community associations with 501(c)(3) recognition, incorporation, a formal board of directors with written bylaws, and the ability to utilize legal tools to advocate for their interests.

The challenges facing both organizations in furthering their missions are great. Both communities include areas designated as “distressed” by Baltimore City, where there are nearly four times as many vacant homes and lots compared to other neighborhoods.²³ Public safety problems, poor health outcomes, lower than average educational attainment, and high poverty and unemployment rates are just some of the many challenges faced by these communities.²⁴ Despite these grim statistics and labels, the strength of these communities never ceases to amaze and surprise.

Community lawyers conduct their work largely, and necessarily, in the background of these community associations.²⁵ By carefully reversing the

BALTIMORE NEIGHBORHOOD INDICATORS ALLIANCE, <http://www.bnijfi.org/communities?sCommunity=Greater%20Roland%20Park/Poplar%20Hill>.

20. Author’s reflections from practice and interview with Anne Blumenberg, *supra* note 6.

21. *Id.*

22. While I use OROSW and GGCA as the examples in this article, they persist despite the trends described. Other organizations falter under these trends, falling into an inactive status.

23. Baltimore City’s 2011 Housing Market Typology, <https://data.baltimorecity.gov/Housing-Development/2011-Housing-Market-Typology/782b-zpd7>.

24. Community Statistical Profiles for Southwest Baltimore and Midway/Coldstream, BALTIMORE NEIGHBORHOOD INDICATORS ALLIANCE, <http://www.bnijfi.org/communities?sCommunity=Southwest%20Baltimore> and <http://www.bnijfi.org/communities?sCommunity=Midway/Coldstream>. The Greater Greenmount Community Association straddles two different community statistical areas and includes the communities of East Baltimore-Midway (included in the Midway/Coldstream community statistical area) and Barclay (included in the Greater Charles/Barclay community statistical area). For the purposes of this article, the Midway/Coldstream community statistical area is utilized because it is somewhat more reflective of the neighborhood. The Greater Charles/Barclay community statistical area includes seven additional neighborhoods outside of Greater Greenmount, whereas the Midway/Coldstream community statistical area includes only one other neighborhood.

25. Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 377 (2013).

all-too-common disempowering and damaging effect the legal system, especially the criminal justice system, has on low-income communities of color,²⁶ clients lead the effort and the lawyer works to find the legal tools and points of leverage to bring the client's goals to fruition.²⁷ While community lawyering encompasses a much broader array of representation,²⁸ for this article, I focus solely on community lawyers' representation of community associations in predominantly low-income neighborhoods.

Within this context, community lawyers build capacity through a wide array of cases. The bookends of this spectrum in the author's practice range from drafting and revising bylaws, ordinarily limited and not complex, to representing a neighborhood in novel litigation against the owner of vacant, nuisance properties; extending available remedies; and pushing the policy environment.²⁹ While on its face, these two types of representation seem starkly different to an attorney, they share certain important similarities to a community lawyer in terms of empowerment of the client community. In the first instance, the lawyer guides the organization through creation of self-governance in terms of democratic procedures. In the second instance, the lawyer takes the more traditional role of representation in court, but this representation is informed by providing the community a voice in court, utilizing legal tools to remedy problem properties in order to compel the law to adapt and address the community's justice claims.

II. The Significance: Why Community Associations Matter and How Community Lawyers Aid in Their Efforts to Matter More

The first part of this article surveys the importance of community organizations and how attorneys both bolster and build on their efforts. While acknowledging the sometimes nefarious, divisive use of community associations, the creation of strong community groups with strong counsel in all kinds of neighborhoods may neutralize or even remove divisions. This is in part because community associations with great capacity tend to be better able to bridge divides and avoid the common pitfall of being too inwardly focused, isolationist, and unwelcoming. Communities with capacity and representation are able to connect across boundaries, coordinate efforts, leverage the support of other organizations and institutions, and make an even greater positive impact. As a result, neighborhoods with

26. Sarah Spangler Rhine, *Criminalization of Housing: A Revolving Door That Results in Boarded up Doors in Low-Income Neighborhoods in Baltimore, Maryland*, 9 U. MD. L.J. RACE RELIGION GENDER & CLASS 333, 333–34 (2009); Todd R. Clear, *The Effects of High Imprisonment Rates on Communities*, 37 CRIME & JUST. 97, 100–02 (2008).

27. Bennett, *supra* note 2, at 92.

28. Tokarz et al., *supra* note 5, at 362–63.

29. See, e.g., *Coldstream-Homestead-Montebello Community Corp., et al. v. Wizig, et al.*, Case No. 24-C-13002570 (Balt. City Cir. Ct. 2014).

strong community associations enjoy a greater degree of engagement and resilience.

A. Checkered Record of Community Organizations

It would be irresponsible not to acknowledge at the outset the checkered track record of community associations and the uneven balance of political power that often makes up the larger context in which the community association operates.³⁰ As with any group of individuals, community associations sometimes use their power to exclude, discriminate, and isolate themselves,³¹ while other times, they welcome diversity, lead progressive social movements, and build bridges between previously segregated groups.³² For example, a community association may oppose the development of low-income affordable rental housing, a group home, or a drug treatment facility in their neighborhood out of the fear that such developments lower property values³³ and from the long shadow of segregation that concentrated such developments in minority communities.³⁴ On the other hand, community groups can unite diverse neighborhoods, working collaboratively to address neighborhood concerns.³⁵ As one may expect, the practice of community lawyering in such contexts sometimes falls far from the ideal.³⁶ Sometimes community associations bring cases to attorneys that aim to exclude, discriminate, and isolate.³⁷ In these

30. Bennett, *supra* note 2, at 99–100.

31. ANTERO PIETILA, NOT IN MY NEIGHBORHOOD: HOW BIGOTRY SHAPED A GREAT AMERICAN CITY, 35–36 (2010). See also Roman, *The Arsenal of Exclusion*, 99% INVISIBLE (Apr. 4, 2012), available at <http://99percentinvisible.org/episode/episode-51-the-arsenal-of-exclusion/>.

32. Interview with Joyce Smith, *supra* note 7.

33. Author's reflections from practice.

34. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC, June 2014.

35. Interview with Joyce Smith, *supra* note 7. See also *infra* Part II.B.

36. Bennett, *supra* note 2.

37. Here, community lawyers actually benefit from, rather than muddling through, the professional rules of responsibility. For example, community lawyers often receive requests from community groups for representation in opposition to a development. By conservatively limiting their practice to cases that avoid potential conflicts of interest, community lawyers may opt out of cases that pit communities or nonprofits against one another. In the example, if the developer is a non-profit affordable housing developer, a broad and well-drafted conflict of interest policy, reflecting the professional rules of responsibility, allows the community lawyer to decline the case on the basis of conflicts of interest. If, in another variation on the example, two overlapping community groups hold divergent views on the development, the professional rules of responsibility's conflict of interest rules guide attorneys through whether a waiver could be obtained or not. By opting out of situations that pit two communities against one another, a lawyer avoids being mired down in those situations that erode community capacity. Moreover, community lawyers may advise potential clients when their goals contravene

instances, if unable to bridge divisions, community lawyers and their client constituency are best served by acknowledging the limits of legal representation, the fluidity of power dynamics in neighborhoods, and awaiting the return of opportunities allowing the attorney to build up or build upon strong community groups.³⁸

B. Bridging Divides, Bringing Together

Despite the potential tendencies of community groups to add to divisions, strong organizational capacity can build bridges across deep historical divides in order to gain political power. Strengthening the capacity of lower-income communities through legal representation can, in turn, balance out the political power disparities. Communities with less capacity tend to enjoy less political power.³⁹ These groups garner greater political power by finding allies that share concerns, bringing people together, and advocating as a group. By bridging across those divisions and bringing people together, communities build their capacity to affect change. Community lawyers aid in this work by putting in place self-governing democratic procedures for decision making, and then, by building on that strong foundation, aiding the community in advocating to achieve their goals.

Both OROSW and GGCA exemplify this point. For OROSW and GGCA, as well as other community groups, Community Law Center attorneys begin their work by helping groups to bridge divides and bring people together. One way community lawyers accomplish this is by working through organizational documents, like bylaws. In neighborhoods often disengaged and disempowered from the democratic process, this practice requires tremendous attentiveness and patience in educational efforts to ensure all members understand the documents created. For example, by resisting the temptation to adopt a standard boiler-plate provision and instead taking the time to meet with the board of directors to talk through various alternative proposals, the community lawyer provides

legal safeguards for protected classes or otherwise disregard the public charitable purposes required of 501(c)(3) tax-exempt entities. So, in the example, if the development involves a group home of a protected class and the community organization's governing documents contain a nondiscrimination provision, the community lawyer can decline the representation because such an action likely violates laws protecting those classes as well as the organization's own governing documents.

38. Interview with Anne Blumenberg, *supra* note 6.

39. See, e.g., Sara Imperiale & Wang Pian Pian, *Waste Incineration, Community Participation, and Environmental Justice: A Comparative Study of China and the United States*, 14 VT. J. ENVTL. L. 435, 462 (2013) (comparing the differences in siting decisions of incinerators in high capacity and low capacity communities); R. Gregory Roberts, *Environmental Justice and Community Empowerment: Learning from the Civil Rights Movement*, 48 AM. U. L. REV. 229, 250 (1998) (discussing the importance of community empowerment to counter environmental injustice in siting decisions).

a conversational space for the group to formulate its own procedures. In addition to carefully crafting simple and straightforward rules that everyone can easily understand and follow, community lawyers lay the ground rules for conflict resolution procedures and support the group as it works through tough decisions to ensure fair and efficient representation from all corners of the community. These organizational documents form the foundation of all other efforts the community group undertakes because they allow individuals to come together in an open and neutral space, elect their own leadership, and make their own decisions. For neighborhoods like Southwest and Greater Greenmount, long excluded from these basic democratic processes, in places where segregation and divisions run deep, this step is not so simple. Rather than a simple step for residents, it requires something more like a leap into an often unfamiliar legal world. From there, a community lawyer's work takes many forms, progressing into using many different legal tools, depending on the needs of the neighborhood.

Building off strong foundation documents and legal representation, both OROSW and GGCA enjoy self-governing democratic procedures for decision making and a strong voice in advocating for community plans and nuisance abatement utilizing legal tools. As a result, their leadership understands how to navigate the power structures at play in their community and they both cite the ability to bridge divides and bring people together among their proudest accomplishments. For example, prominently among OROSW's greatest accomplishment is that the organization bridged the historic color divide along Baltimore Street that segregated historically black communities from white communities.⁴⁰ Together, they broke down stereotypes and found shared, sustainable solutions to shared problems, such as open-air drug markets, rather than just moving the problem to the other side of the road.⁴¹ When all the neighborhoods organized together, worked with the responsible agencies, and devised their own solutions, they gained the respect of political leadership.⁴² Similarly, Sandra Coles saw GGCA form as a united effort across two neighborhoods—Barclay and East Baltimore/Midway—historically segregated from each other.⁴³ She likens the community's early efforts to the Underground Railroad.⁴⁴ They shared what little they had with each other, collaborated to devise their own solutions, and never gave up hope.⁴⁵ The strength they built bridging boundaries

40. Interview with Joyce Smith, *supra* note 7.

41. *Id.*

42. *Id.*

43. Interview with Sandra Coles, *supra* note 7.

44. *Id.*

45. *Id.*

did not go unnoticed, and, in 2013, the neighborhood won the city-wide clean-up competition, which was a great source of pride.⁴⁶

C. *Civic Engagement, Amplifying, and Advocacy*

Strong neighborhood associations protect and provide for the residents of a community. They accomplish this three ways: through neighborhood engagement, amplification of a united voice, and by using that voice to advocate for their interests. A robust community association creates a valuable public sphere, raises social capital, encourages healthy communication among neighbors, and addresses community needs. By engaging all stakeholders in a neighborhood, the community association furthers enfranchisement and civic engagement.⁴⁷ As a self-governing entity, nonprofits allow individuals in leadership positions to learn the trials and tribulations of the democratic process.⁴⁸ Rather than a top-down approach to solving neighborhood problems, grassroots groups, with the aid of a community lawyer, devise their own, often more sustainable, solutions. Community members understand the issues more intimately than any government official or other outsider, and decisions made without their input run the risk of failing or bringing harm to the neighborhood.

The powerful ability to amplify a united voice arises out of community capacity. Attorneys often aid in this amplification. For example, take a local undesirable land use issue like the siting of an environmental hazard. The not-in-my-back-yard (NIMBY) mindset of one resident without a community association may be easily ignored by decision makers.⁴⁹ A community association transforms that single voice to the cry of a community. A community association with strong capacity to leverage coalition and neighboring associations' support, as well as its business owners, churches, unions, environmental groups, and its other stakeholders, creates a deafening roar nearly impossible for decision makers to ignore.⁵⁰ Such power contains potential to flip on its head the traditional narrative of community associations from one about divisions to one about building connections across divisions with the ability to devise its own destiny.⁵¹ Strong communities resist the divide and conquer strategies all too common among developers, politicians, and other outside influences.⁵² Communities with the

46. *Id.*

47. Dana Brakman Reiser, *Dismembering Civil Society: The Social Cost of Internally Undemocratic Nonprofits*, 82 OR. L. REV. 829, 865–66 (2003).

48. *Id.*

49. Roberts, *supra* note 39, at 257.

50. *Id.* at 263–64.

51. *Id.*

52. Interview with Joyce Smith, *supra* note 7.

capacity to engage in coalition work learn from each other, so that problems common to all communities create cross-boundary connections.

The activities of both OROSW and GGCA, aided by Community Law Center, demonstrate how community groups with attorneys can transform the power dynamic of low-income urban neighborhoods from a relationship of divide and conquer to a relationship of respect and deference. OROSW, with their Community Law Center attorneys, made use of the local municipal planning process to devise a grassroots-led community plan that recognized the assets of the neighborhood for the first time.⁵³ They filed impact statements in criminal cases, which gave the community some control in combatting the rampant drug trade in the area.⁵⁴ Within the decade of their formation, visible improvements had been made that persist today.⁵⁵ A cleaning competition and clean-and-green program became an organizing tool for the neighborhood, bringing together old and young alike.⁵⁶ The success of these efforts led to municipal adoption of the programs.⁵⁷ Likewise, Baltimore City directs developers to work with GGCA as a result of their strong relationship⁵⁸ rather than requesting the community to rubber stamp whatever the developer and city decide without community input and engagement, as is all too often the case in other communities without a strong community organization. When Sandra Coles noticed children playing in a dangerous, abandoned garage, it brought back negative memories of her own childhood.⁵⁹ A call to elected city officials led to the building being removed, and a community garden now sits in its place.⁶⁰ Moreover, both organizations currently count themselves as two of six plaintiffs in a large lawsuit against the owner of vacant properties in their neighborhood.⁶¹ The ability to serve as plaintiffs would not be possible without community capacity, among other things, because the statute that provides standing for such a lawsuit requires legal organization.⁶²

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Interview with Sandra Coles, *supra* note 7.

59. *Id.*

60. *Id.*

61. *Fighting Baltimore's Blight: Lawsuit Challenges Owner Holding Properties in Continuous State of Vacancy and Disrepair*, CMTY. LAW CTR., <http://communitylaw.org/>.

62. MD. CODE ANN., REAL PROP. § 14-123(a)(2) (2012).

D. Resilience

Resilience, defined as the ability to rebound from difficulties,⁶³ is an important component of community capacity. Capacity to build and strengthen ties among a community plays a critical role in the well-being of its members. Community ties matter in health outcomes and resilience.⁶⁴ The loss of community can have a devastating effect on individuals.⁶⁵ In responding to both natural and nonnatural disasters, strong communities survive due to their ability to help each other recover and cope with changes.⁶⁶ As climate change promises to bring more natural disasters⁶⁷ and the foreclosure and economic crises continue,⁶⁸ the ability for low-income communities to thrive, or even survive intact, is especially critical.

Resilience as a result of nonprofit community capacity shows itself in the persistence of hope among the leaders of OROSW and GGCA and in the ability of these groups to empower others. Every neighborhood has problems, but where a community group brings people together to solve those problems, they are not so quick to give up.⁶⁹ When residents see their own leaders bring about change in the neighborhood, they realize that they can make a difference, too.⁷⁰ Putting the people of the neighborhood first ensures their protection.⁷¹ Capacity, to Joyce Smith, is when the leaders of an organization "have the skills and ability to access the services they need."⁷² Capacity, to Sandra Coles, is "people who can manage

63. BUILDING COMMUNITY RESILIENCE POST-DISASTER: A GUIDE FOR AFFORDABLE HOUSING & COMMUNITY ECONOMIC DEVELOPMENT PRACTITIONERS 61–62 (Dorcas R. Gilmore & Diane M. Standaert eds., 2013) [hereinafter BUILDING COMMUNITY RESILIENCE POST-DISASTER].

64. Int'l Federation of the Red Cross and Red Crescent, *Understanding Community Resilience and Program Factors That Strengthen Them* (2012), http://www.ifrc.org/PageFiles/96984/Final_Synthesis_Characteristics_Lessons_Tsunami.pdf; U.S. Dep't of Homeland Sec., Homeland Sec. Advisory Council, *Community Resilience Task Force Recommendations* (June 2011), available at <http://www.dhs.gov/xlibrary/assets/hsac-community-resilience-task-force-recommendations-072011.pdf>; Eric Klinenberg, *Adaptation*, NEW YORKER, Jan. 7, 2013, at 32.

65. Ana Petrovic, *The Elderly Facing Gentrification: Neglect, Invisibility, Entrapment, and Loss*, 15 ELDER L.J. 533, 574–77 (2007).

66. BUILDING COMMUNITY RESILIENCE POST-DISASTER, *supra* note 63, at 61–62.

67. Klinenberg, *supra* note 64.

68. Jessica Silver-Greenberg, *Despite Aid, Borrowers Still Face Foreclosure*, N.Y. TIMES (Feb. 21, 2013), http://www.nytimes.com/2013/02/22/business/homeowners-still-face-foreclosure-despite-billions-in-aid.html?pagewanted=all&_r=0.

69. Interview with Joyce Smith, *supra* note 7.

70. *Id.*

71. Interview with Sandra Coles, *supra* note 7.

72. Interview with Joyce Smith, *supra* note 7.

whatever comes their way.”⁷³ Both definitions reveal the role capacity plays in resilience.

Community lawyers can help build capacity and its connected resilience several ways. For example, by leading workshops that teach resident leaders and community members advocacy skills, community lawyers can equip community members with the knowledge and ability to meet challenges confronting their community that require that skill. By counseling community associations through the sometimes difficult discussions that accompany legal issues, community lawyers deepen the connectivity and communication skills of the resident members of the community association. Community lawyers also help community associations connect to legal and other outside resources to solve problems, building the social capital of residents.

III. The Squeeze

The third part of this article catalogues the numerous forces exerting pressures on the survival of community associations: demographic shifts and municipal responses to those shifts, declining funding, and increasing regulatory burdens. Each of these pressures drains the very limited energy and funds of small nonprofits, even at a time when the services expected of them increase.⁷⁴ Aging community leaders face a myriad of administrative headaches to maintain their organizational entity, which has less funding to meet those challenges. This squeeze is not at all unique to community associations and is being felt throughout the small nonprofit community,⁷⁵ including those nonprofit organizations that do critical work supporting community associations.⁷⁶

A. Demographic Shifts

Numerous reports and studies decry the nonprofit leadership vacuum and the potentially disastrous succession scenarios resulting from the retirement of baby boomers.⁷⁷ Nearly all of these studies, as well as the limited

73. Interview with Sandra Coles, *supra* note 7.

74. Danné L. Johnson, *Untwisting Lifeline Nonprofits in the Economic Crisis*, 18 GEO. J. ON POVERTY L. & POL'Y 201, 221–27 (2011).

75. *Id.*

76. Wendy E. Hollingshead Corbett & Justin R. Corbett, *Community Mediation in Economic Crisis: The Reemergence of Precarious Sustainability*, 11 NEV. L.J. 458, 459 (2011).

77. Thomas J. Tierney, *The Nonprofit Sector's Leadership Deficit* (Mar. 1, 2005), available at <http://www.bridgespan.org/Publications-and-Tools/Hiring-Nonprofit-Leaders/Hiring-Strategy/The-Nonprofit-Sectors-Leadership-Deficit.aspx#.Uh9hQpLVBKY>; Annie E. Casey Foundation, *Nonprofit Executive Leadership and Transitions Survey 2004*, available at http://www.aecf.org/upload/PublicationFiles/executive_transition_survey_report2004.pdf; Jeanne Bell, Richard Moyers & Timothy Wolfred, *Daring to Lead* (Compass Point Nonprofit

succession planning resources at the disposal of nonprofits, focus almost entirely on larger nonprofits with paid staff.⁷⁸ Most community associations subsist solely on unpaid volunteers. The day-to-day tasks of operating the nonprofit are often delegated informally among the leadership, friends, or neighbors with the skills to accomplish the tasks. Such informal operation can make succession an even more difficult transition than in a nonprofit with paid staff and written job descriptions. These organizations face even more challenges in succession and must consistently recruit skilled volunteers. As the population ages and becomes more segregated, small community associations struggle to develop new, young leaders with the skill sets needed to run the organization.

1. Aging Populations

The aging population of distressed neighborhoods, left without access to succession planning resources, risks leaving a leadership vacuum in community associations. Additionally, geographic mobility trends indicate people in low-income communities move more often,⁷⁹ so the baseline level of transitions and turnover in these communities already tends to be higher than those dominated by higher-income households. Moreover, these communities are often experiencing over-incarceration of their youth.⁸⁰ As a result, even with succession planning tools, the potential younger leaders are lost to a host of reentry issues: employment, housing, and other problems associated with life after incarceration.⁸¹ The older leaders remain in leadership positions even when they are ready to move on, simply because no one else is available to lead the organization. Without young leaders, community associations find it difficult to utilize increasingly online resources and applications.⁸² Aging leaders also find it difficult to obtain the resources they need to age in their communities and may be forced to leave when they require elder

Services/Meyer Found. 2006), available at http://www.compasspoint.org/sites/default/files/docs/research/194_daringlead06final.pdf.

78. Annie E. Casey Foundation, *Building Leaderful Organizations* (Jan. 1, 2008), <http://www.aecf.org/~media/Pubs/Other/B/BuildingLeaderfulOrganizationsSuccessionPlann/Building%20Leaderful%20Organizations.pdf>.

79. While geographic mobility rates remain low, those in lower income brackets move a lot more. Paul Ihrke, Carol S. Faber & William K. Koerber, *Geographic Mobility: 2008 to 2009* 13 (U.S. Census Bureau Nov. 2011), <http://www.census.gov/prod/2011pubs/p20-565.pdf>.

80. Clear, *supra* note 26, at 103.

81. Sarah Spangler Rhine, *Criminalization of Housing: A Revolving Door That Results in Boarded Up Doors in Low-Income Neighborhoods in Baltimore, Maryland*, 9 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 333, 344–54 (2009).

82. Michael P. Anderson, *Ensuring Equal Access to the Internet for the Elderly: The Need to Amend Title III of the ADA*, 19 ELDER L.J. 159, 162–63 (2011).

care.⁸³ As a result of all these trends, more and more community associations face leadership crises. When a long-time leader gets sick or dies, and no one in the community knows how to take his or her place, the community group may simply disband altogether.

Both organizations' leaders observe the greying of their communities and the effects that has on the organizations. Joyce Smith explains that all of the leaders in OROSW are older now.⁸⁴ A small, committed group of "die-hard" community leaders is "hanging in there, building off of past strength."⁸⁵ At its apex, community leaders from the smaller neighborhoods that make up Southwest Baltimore City all came together to represent their neighborhood in giving OROSW a strong voice.⁸⁶ Many of these leaders passed away and the young people have dropped out.⁸⁷ Even Joyce, who wants to stay in the neighborhood, is not sure where she will live as she ages.⁸⁸ Identifying young leaders and connecting with their concerns tops her list of challenges OROSW faces.⁸⁹ In Greater Greenmount, Sandra Coles and her husband were the youngest couple on the block when they first moved into "a very good neighborhood," but they watched the neighborhood decline.⁹⁰ As older residents passed away, children moved into the homes, bringing with them drug addiction and other health issues that made it difficult for them to maintain their parents' properties.⁹¹ They also lacked the resources to keep the houses maintained in the face of financial strains.⁹² When the neighborhood needed a leader after the existing leaders retired, Sandra Coles accepted the responsibility.⁹³

2. Income Segregation and Scarcity of Skill Sets

Diversity in leadership bolsters organizational effectiveness by ensuring various viewpoints are represented.⁹⁴ Increase in income segregation

83. Jon Pynoos et al., *Aging in Place, Housing, and the Law*, 16 ELDER L.J. 77, 84 (2008).

84. Interview with Joyce Smith, *supra* note 7.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Interview with Sandra Coles, *supra* note 7.

91. *Id.*

92. *Id.*

93. *Id.*

94. Lumen N. Mulligan, *What's Good for the Goose Is Not Good for the Gander: Sarbanes-Oxley-Style Nonprofit Reforms*, 105 MICH. L. REV. 1981, 2007 (2007); Kathleen M. Boozang, *Does an Independent Board Improve Nonprofit Corporate Governance?*, 75 TENN. L. REV. 83, 112 (2007); National Council of Nonprofits, *Diversity on Boards*, <https://www.councilofnonprofits.org/tools-resources/diversity-nonprofit-boards>.

in some areas⁹⁵ drains community associations of some of their diversity. This, in turn, drains some of the valuable diversity and skill sets, like finance and technology, that community associations need to survive today. For example, with the creation of online-only tax forms,⁹⁶ the digital divide can create an insurmountable obstacle for community associations to maintain their tax-exempt status, even for simple forms.⁹⁷ Along with high concentrations of low-income residents, if a neighborhood's residents lack affordable pathways to formal educational attainment, it may be difficult to recruit leaders with diverse skill sets.

While leadership skills may be learned in a large variety of contexts not necessarily requiring any formal educational training, at least a few members of a community who develop skills in more formal contexts can prove to be invaluable in running an organization where the leaders also conduct the day-to-day operations. For example, a community association without any or with very few residents with formal training in finance may struggle to recruit a treasurer for their board.

Even when skilled professionals live in the community, transit and economic challenges mean greater commute times to work and multiple jobs.⁹⁸ As a result of long commutes to work and holding down multiple jobs to make ends meet, those residents with skills may lack the time needed to volunteer to strengthen the community association's capacity.⁹⁹ Income-segregated neighborhoods, without access to skilled residents with the spare time to volunteer, struggle to do everything that is required to maintain a nonprofit organization.

OROSW and GGCA demonstrate strength in skills development and diversity, but both leaders discuss challenges in recruiting, training, and maintaining new, skilled leaders. Joyce Smith developed leadership skills in a nonprofit program that used to be available to all new community

95. Richard Fry & Paul Taylor, *The Rise of Residential Segregation by Income*, PEW RESEARCH CTR. (Aug. 1, 2012), <http://www.pewsocialtrends.org/2012/08/01/the-rise-of-residential-segregation-by-income/> (finding an increase in segregation in twenty-seven of the thirty major U.S. cities).

96. See, e.g., IRS Form 990-N.

97. Nicole S. Dandridge, *Choking Out Local Community Service Organizations: Rising Federal Tax Regulation and Its Impact on Small Nonprofit Entities*, 99 KY. L.J. 695, 717 (2010–2011) (describing the intimidation small nonprofits face in filing Form 990-N).

98. Elizabeth Roberto, *Commuting to Opportunity: The Working Poor and Commuting in the United States* (Brookings Inst. Metro. Pol'y Program Feb. 2008), http://www.brookings.edu/~media/research/files/reports/2008/3/14%20transportation%20puentes/0314_transportation_puentes.

99. Corp. for Nat'l & Cmty. Serv., Office of Research & Pol'y Dev., *Volunteering in America: 2007 City Trends and Rankings*, http://www.nationalservice.gov/pdf/VIA_CITIES/VIA_cities_summary.pdf.

association leaders for free, but many of the nonprofit training programs available now are too expensive for organizations to afford.¹⁰⁰ Without training opportunities to foster new community leaders from the smaller neighborhoods that make up Southwest Baltimore City, collaborations have become increasingly difficult for OROSW.¹⁰¹ Sandra Coles' leadership skills largely came from sharing a similar background with others in the neighborhood; from an inner strength resulting from religious conviction; and from her work with a local community development corporation, People's Homesteading Group, Incorporated (PHG).¹⁰² GGCA's leadership includes many new skilled leaders who recently moved into the neighborhood, but the organization experiences difficulty in finding and retaining them.¹⁰³ The strengths that Joyce Smith and Sandra Coles bring to their respective organizations have always been hard to find to lead community associations, and many community associations simply shut down when skilled leaders leave.

B. Shrinking Cities

In addition to aging and income segregation, many urban communities must contend with the larger trends of population loss. Baltimore, like many rust belt cities, qualifies as a shrinking city,¹⁰⁴ with 622,793 residents in 2014, down from a high of nearly 950,000 in 1950.¹⁰⁵ As residents leave and municipalities demolish blighted properties, community associations are left with fewer members and potential leaders to make up and maintain the organization. Demolition of vacant properties is a necessary solution to the severe problems that vacant properties bring

100. Interview with Joyce Smith, *supra* note 7.

101. *Id.*

102. Interview with Sandra Coles, *supra* note 7. The Community Law Center's close relationship with PHG is worth noting: "Community Law Center has been with us every step of the way through the acquisition, redevelopment, and sale of houses in our community. The amount of legal expertise needed was overwhelming and it was Community Law Center that kept us alive. We could not have done it without them." Michael Mazepink, Executive Director, People's Homesteading Group, <http://communitylaw.org/wp-content/uploads/2012/05/Pages-from-2011-clc-annual-report-4pp-2.pdf>.

103. Interview with Sandra Coles, *supra* note 7.

104. Barbara L. Bezdek, *Citizen Engagement in the Shrinking City: Toward Development Justice in an Era of Growing Inequality*, 33 ST. LOUIS U. PUB. L. REV. 3, 17 (2013); Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 227-28 (2010).

105. Baltimore Neighborhood Indicators Alliance, *Grow Baltimore*, Brief #1: Understanding Migration in Baltimore City (Apr. 2015), available at http://www.bnaijfi.org/wp-content/uploads/2015/03/BNIAJFI_GrowBaltimore_Brief1_March2015.pdf.

to a community.¹⁰⁶ Strategic demolition or deconstruction, carefully carried out in concert with the community's input, and alongside other revitalization efforts, removes blight and encourages reinvestment.¹⁰⁷ Widespread demolition—without a clear vision and plan for future use, without involvement of the community in devising those plans, and without simultaneous investment in rehabilitation of existing structures—runs the risk of cutting whatever remains of the deep, strong community ties that exist, and disempowering remaining residents.¹⁰⁸ Those ties are much more difficult to rebuild or replace than the sticks and bricks of structures.

The importance of true resident engagement in demolition and revitalization plans comes through loud and clear in discussions with community leaders, whose experiences include times when engagement led to strong resident ownership over revitalization plans and times when disengagement and demolition added to the problems of the community. OROSW's deep involvement in the planning process in the early 2000s not only garnered respect, but also helped community members develop a sense of pride in their community, which, in turn made progress much more sustainable.¹⁰⁹ Despite the best laid plans, however, snaggle-tooth demolition (in which a mid-block row home is torn down), snuck through in Southwest Baltimore, leading to blighted vacant lots with no developer interest.¹¹⁰ Notwithstanding OROSW's strong involvement in creating community green spaces out of vacant lots, true engagement of residents fell by the wayside.¹¹¹ Now, community consultations come after the fact, requesting the neighborhood's approval of plans already laid down without any input.

Greater Greenmount has experienced an equally complex relationship with demolition and revitalization plans. Sandra Coles notes that demolition of public housing in Baltimore City in the 1990s led to an increase of problems in the community when displaced tenants settled into their area.¹¹² More recently in Greater Greenmount, a relocation of residents as a result of demolition plans led to the loss of some potential community leaders.¹¹³ While recent renovations of old row homes, especially those

106. Alan Mallach, *Laying the Groundwork for Change: Demolition, Urban Strategy, and Policy Reform* 3–4 (Brookings Inst. Metro. Pol'y Program Sept. 24, 2012), <http://www.brookings.edu/research/papers/2012/09/24-land-use-demolition-mallach>.

107. James J. Kelly, Jr., "We Shall Not Be Moved": *Urban Communities, Eminent Domain and the Socioeconomics of Just Compensation*, 80 ST. JOHN'S L. REV. 923, 989–90 (2006).

108. *Id.* at 958–62.

109. Interview with Joyce Smith, *supra* note 7.

110. *Id.*

111. *Id.*

112. Interview with Sandra Coles, *supra* note 7.

113. *Id.*

where the developer partnered with PHG, bring hope,¹¹⁴ the developer chosen did not reflect the wishes of the community.¹¹⁵ As a result, not all community members feel the decision was fair or properly done in a way that maximized benefits for the current residents.¹¹⁶

C. Falling Funding

The precipitous decline in funding for operating costs from corporate, individual, foundation, and government sources, coupled with its corollary, increasing competition for funding, makes it even more difficult for volunteers to dedicate time and resources to addressing a growing number of problems. In addition to declining funding,¹¹⁷ available resources rarely adequately cover the administrative expenses needed for nonprofits to efficiently administer programs.¹¹⁸ This decline in resources and further restrictions on use of funding also make collaboration with other nonprofits difficult and leave little flexibility for a neighborhood whose mission encompasses broad goals.¹¹⁹ As funders implicitly ask nonprofits to do more with less or drift from their mission to fit into narrow funding requirements,¹²⁰ nonprofits also find an increase in demand for their services.¹²¹ This affects not only soup kitchens and housing programs, but also community associations that must fulfill much of the work of a shrinking municipal government: everything from trash collection and policing to managing public parks and green spaces. These unfunded obligations and expectations further stress the limited capacity of community associations.

114. Jacques Kelly, *New Homes Rise in Greater Greenmount*, BALT. SUN (Aug. 2, 2013), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-kelly-column-barclay-20130802,0,7904336.column#ixzz2awX5jurf>.

115. Interview with Sandra Coles, *supra* note 7.

116. *Id.*

117. Sandra Cyr, *Nonprofits Face Decline in Public Funding*, North Carolina State Humanities & Soc. Sci. (Oct. 26, 2011 5:34 AM), <http://news.chass.ncsu.edu/?p=32234> ("From 2008 to 2010, annual private giving dropped by \$13 billion, and foundation giving fell 13 percent during the recession."); *A Guide to Navigating Changing Times*, NONPROFIT FINANCE FUND, <http://nonprofitfinancefund.org/nonprofit-consulting/navigating-financial-crisis#impact>.

118. Gene Takagi, *Overhead Myth: Thoughts from a Nonprofit Attorney*, NONPROFIT LAW BLOG, <http://www.nonprofitlawblog.com/search/Overhead+Myth>; The Overhead Myth: An Open Letter to Donors of America from GuideStar, Charity Navigator, and BBB Wise Giving Alliance, http://overheadmythcom.b.presscdn.com/wp-content/uploads/2013/06/GS_OverheadMyth_Ltr_ONLINE.pdf.

119. Interview with Sandra Coles, *supra* note 7.

120. Jennifer Ceema Samimi, *Funding America's Nonprofits: The Nonprofit Industrial Complex's Hold on Social Justice*, 1 COLUM. SOC. WORK REV. 17, 18, http://cswr.columbia.edu/wp-content/uploads/2012/10/2010_vol1_pg17_samimi.pdf.

121. Johnson, *supra* note 74.

In its earlier years, OROSW's funding from numerous sources paid for staff and came through an anchor institution, which assisted with administrative functions.¹²² Their early successes came with great support from a foundation funder who believed in them and anchor institutions dedicated to the neighborhood.¹²³ Now, Joyce Smith explains, funding is less flexible and tied to specific deliverables that can be difficult to show when working on less tangible results. Funders today also ask organizations to replicate best practices that worked somewhere else, often basing their funding on the mistaken belief that what works in one place will work somewhere else without modifications.¹²⁴

GGCA, a newer organization, has no paid staff; gets limited funding, just "enough to keep [its] head above water"; and relies especially on its strong partnership with PHG, which has stayed with the community through thick and thin¹²⁵ and provides office space for GGCA's board meetings. Sandra Coles credits PHG with teaching her that "even if you just had one slice of bread, you can share what little you have and survive together." GGCA faces challenges, though, in bringing in the resources needed to keep new leaders from being overwhelmed by all the issues they face.¹²⁶ Moreover, Sandra Coles laments the narrow focus of other nonprofits active in their area that provide help in the form of handouts, but not sustainable, holistic solutions to the underlying problems, like unemployment, that residents face.¹²⁷ Narrowly focused funding that fails to support more holistic, community-wide efforts also detracts from working as a whole to solve problems; Sandra explains that a community organization must bring people together because what affects one block affects the rest of the community.¹²⁸

D. Rise in Complexity of Regulatory Systems

Despite calls from funders and the public for nonprofits to spend less on administrative expenses, an increasingly complex and burdensome regulatory framework pulls nonprofits in the opposite direction.¹²⁹ The trend by state and municipal governments to replace tax revenue with fees¹³⁰ also falls particularly hard on small nonprofits, which lack the

122. Interview with Joyce Smith, *supra* note 7.

123. *Id.*

124. *Id.*

125. Interview with Sandra Coles, *supra* note 7.

126. *Id.*

127. *Id.*

128. *Id.*

129. Dandridge, *supra* note 97, at 707–21.

130. Nat'l Council of Nonprofits, *State Budget Crises: Ripping the Safety Net Held by Nonprofits*, at 7–8 (Mar. 16, 2010), <https://www.councilofnonprofits.org/sites/default/files/documents/Special-Report-State-Budget-Crises-Ripping-the-Safety-Net-Held-by-Nonprofits.pdf>.

advocacy power to resist fee increases and adjust to regulatory changes that happen without their knowledge. Nonprofits starting today face a much more complex array of regulatory burdens than twenty years ago.¹³¹ For example, after the passage of the Pension Protection Act of 2006,¹³² small nonprofits,¹³³ which had previously been exempted from filing annual tax forms,¹³⁴ were now required to file a Form 990-N (e-postcard) with the IRS. Although a simple and straightforward form, failure to file the Form 990-N three years in a row results in automatic revocation of tax-exempt status. Even for those organizations that may have operated for years, keeping up with this shifting landscape can sap energy from the organization's mission-related activities. Especially for small nonprofits facing the other challenges discussed earlier, even simple regulatory burdens or shifts, too often ring the death knell in many small organizations' lives.¹³⁵ Moreover, new regulatory burdens do not often accomplish their goals due to a lack of governmental enforcement¹³⁶ and a lack of capacity to comply.¹³⁷

OROSW and GGCA both find it difficult to keep up with these challenges, but they represent the survivors of the system. OROSW was formed prior to some of today's complexities, such as the annual tax return for small nonprofits, and funding helped it keep up with regulatory requirements.¹³⁸ Joyce Smith notes that OROSW finds it more difficult than before to maintain the organization, especially after the demise of another organization in the area that assisted with its administrative functions.¹³⁹ As discussed, GGCA's successful recruitment of skilled leaders differentiates them from other small nonprofits in being able to maintain their organization.¹⁴⁰ Other small community associations have not fared so well.

131. Dandridge, *supra* note 97, at 696.

132. Pub. L. No. 109-280, 120 Stat. 780, § 1223 (2006), 26 I.R.C. § 6033(i), (j).

133. "Small nonprofits" are nonprofits with annual gross receipts of less than \$25,000. Dandridge, *supra* note 97, at 699.

134. IRS Rev. Proc. 83-23 (superseded by IRS Rev. Proc. 2011-15).

135. *IRS Revokes Exempt Status of 275,000 Nonprofits*, NONPROFIT TIMES (June 9, 2011), <http://www.thenonproffitimes.com/news-articles/irs-revokes-exempt-status-of-275-000-nonprofits/>.

136. Lloyd Hitoshi Mayer & Brendan M. Wilson, *Regulating Charities in the Twenty-First Century: An Institutional Choice Analysis*, 85 CHI.-KENT L. REV. 479, 494 (2010).

137. Julie Goldscheid, *Supporting Accountability: Assessing the Costs of Regulation*, 9 N.Y. CITY L. REV. 321 (2006).

138. Interview with Joyce Smith, *supra* note 7.

139. *Id.*

140. Interview with Sandra Coles, *supra* note 7.

IV. The Solutions

This part of the article examines potential solutions that could act as a release valve from the built-up pressures on small community associations: developing the next generation of community leaders, increasing funding for training and sustaining community organizers to survive the demographic shifts at hand, and increasing access to programs that ease the burdens of small nonprofits complying with the rules. In addition to policy changes, this section explores the roles of community lawyers in working with their clients to help overcome the challenges discussed in Part II. While community lawyers cannot reverse any one of the trends discussed in Part II on their own, they must both understand and respond to these external pressures and shifts.

A. Retention and Recruitment of Leadership

The demographic shifts described in Part II will not reverse easily or quickly, so community associations need the tools to cope with those shifts. Incorporating young people into the community association as much as possible, as members and as leaders, could ensure their voice is included as part of the neighborhood's voice and that the voice of the community remains strong as leaders retire from their positions.

Community lawyers can prevent conflict in leadership transitions by working with community associations to create easily understood governing documents that meet the needs of the community and comport with the legal requirements of the jurisdiction.¹⁴¹ Such procedural conversations create the building blocks for fair and efficient decision making by the neighborhood.¹⁴² Good procedures protect the organization in transition and provide for democratic self-governance. Inadequate procedures may not negatively affect a neighborhood at its genesis, but ten or twenty years down the road, when the initial leaders have inevitably moved on, the community will face a tough transition.

Community lawyers are well-trained to think about the long-term health of the organization by carefully drafting organizational documents. Community lawyers can also help organizations plan for this recruitment in their organizational documents by advising them of the importance of creating and maintaining a nominations committee, holding regular elections, and staggering or limiting the term of directors who

141. ROY A. REDFIELD, *FACTORS OF GROWTH IN A LAW PRACTICE* (1962): "When the business corporation is born, the lawyer is the midwife who brings it into existence; while it functions he is its philosopher, guide and friend; in trouble he is its champion, and when the end comes and the last sad rites must be performed, the lawyer becomes the undertaker who disincorporates it and makes final report to the Director of Internal Revenue." *Id.* at 30. *Dixon v. Process Corp.*, 382 A.2d 893, 898 (Md. Ct. Spec. Appeals 1978).

142. Bennett, *supra* note 2, at 92.

lead the organization. By counseling individual community groups through both the initial drafting and the review of organizational documents as well as offering periodic workshops and trainings to aid in ongoing regular leadership transition, lawyers aid in these often difficult changeovers. In some regards, this work will always be a constant need because membership is fluid and always changing. At the same time, though, community lawyers also seek ultimate empowerment of the group where its self-governing procedures are also self-executing without requiring counsel. In addition to this on-the-ground work to ease leadership transition, a wide array of programs and policies could stem the tide of residents leaving, which would both retain current leaders and provide more people to populate vacancies in leadership positions.¹⁴³ Community lawyers play a role in the formation of and advocacy for many of these programs as well because nearly all of them involve nonprofit partners.¹⁴⁴

Not all demographic shifts underway negatively impact community associations in urban areas. A new generation of young residents and retiring baby boomers flocking back into cities potentially provides a new influx of residents to cities,¹⁴⁵ but this influx brings challenges as well as opportunities. If income segregation persists, rather than reinvigorating communities, current residents are displaced to suburban rings of poverty. Displacement often leads to distrust, and these trends can create difficult divisions in a community.

Community lawyers play a role in bridging those divides as well. To ease the tensions between current residents and newcomers, community lawyers create shared space by hosting legal training programs; seeking and encouraging joint representation opportunities; and finding other creative instances when groups may come together, collaborate, and

143. These programs exceed the scope of this article, but would include everything from programs that allow the elderly to age in place, to restorative justice programs that divert juvenile offenders from a lifetime in the criminal justice system, to providing public spaces to bring both old and young people together, to name a few. Pynoos et. al., *supra* note 83, at 84; Annie E. Casey Foundation, *No Place for Kids: The Case for Reducing Juvenile Incarceration, Issue Brief* (2011), <http://www.aecf.org/resources/no-place-for-kids-full-report/>; Ken Worpole & Katharine Knox, Joseph Rowntree Found., *The Social Value of Public Spaces* (Apr. 24, 2007).

144. Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 *FORDHAM URB. L.J.* 873, 881 (1998).

145. Les Christie, *Cities Are Hot Again*, CNNMONEY.COM (June 15, 2006), http://money.cnn.com/2006/06/15/real_estate/return_to_cities/; William H. Frey, *The State of Metropolitan America—Report, Population and Migration* (Brookings Inst. Metro. Pol'y Program 2010), available at http://www.brookings.edu/~-/media/series/metroamericachapters/metro_america_population.pdf.

communicate with one another.¹⁴⁶ Additionally, community lawyers can help groups put in place safeguards to retain and benefit residents in areas undergoing redevelopment, using tools like affordable housing land trusts or community benefits agreements.¹⁴⁷ Bringing legal tools to community groups to bring people together engages community leaders in transitions occurring in their community, giving them a voice in development and taking steps to avoid displacement.

B. Strengthening While Shrinking

Whenever demolition becomes necessary, it must be undertaken with care and caution to preserve as much of the existing community ties as possible.¹⁴⁸ Utilizing techniques like deconstruction and engaging community development corporations that can hire locally and create affordable housing can help minimize the costs to the community.¹⁴⁹ Wherever possible, people should be allowed to remain in their homes or relocate close-by so as to keep communities intact.¹⁵⁰ Social connections, often difficult to assess and therefore potentially undervalued by data-driven demolition strategies, should be counted among the most important assets of a neighborhood. To preserve these community assets, demolition should occur in conjunction with other revitalization efforts in the area, taking into account the holistic health of the entire community, rather than focusing on simply removing blight from one or two blocks.

Demolition plans must genuinely engage residents in the decision-making process and safeguard their interests and ensure sustainability. At a minimum, vacant lots resulting from demolition must be cared for through a good maintenance plan.¹⁵¹ Ideally, demolition plans include a plan for future use with input from the neighborhood.¹⁵² Where residents agree to create community gardens or otherwise take responsibility for vacant land, their hard work should enjoy legal protections.¹⁵³ Where future use anticipates housing development, community development

146. Bennett, *supra* note 2, at 67.

147. Adam Cowing et al., *Getting There Together: Tools to Advocate for Inclusive Development Near Transit*, 21 J. AFFORDABLE HOUSING & CMTY. DEV. L. 101, 131 (2012).

148. See Barbara L. Bezdek, *To Attain "The Just Rewards of So Much Struggle": Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37, 87-99 (2006) (explaining the value of communities).

149. Kory T. Bell, *One Nail at A Time: Building Deconstruction Law As a Tool to Demolish Abandoned Housing Problems*, 45 IND. L. REV. 547, 570 (2012).

150. William P. Wilen, *The Horner Model: Successfully Redeveloping Public Housing*, 1 Nw. J. L. & SOC. POL'Y 62 (2006).

151. W. Dennis Keating & Kermit J. Lind, *Responding to the Mortgage Crisis: Three Cleveland Examples*, 44 URB. LAW. 1, 22-23 (2012).

152. *Id.*

153. Steve Kilar, *More Protection Sought for "Adopted" Open Space*, BALT. SUN (July 5, 2013), http://articles.baltimoresun.com/2013-07-05/business/bs-bz-adopt-a-lot-sales-20130702_1_baltimore-green-space-miriam-avins-community-garden.

corporations and neighborhood recommendations should enjoy strongly preferred status in choosing among development proposals. In the instances where a municipality sells property to a developer, claw-back provisions should be included and enforced. These provisions should require development to occur within a certain time period and protections against predatory practices like house flipping. Community groups involved in the planning process must have tools and resources at their disposal to bring a plan to life and that must include enforcement capabilities as well as the resources to make it happen.

In addition to the tools discussed above that would also work within this context,¹⁵⁴ community lawyers have several additional tools to bring to this process. An attorney trained in community lawyering helps the neighborhood navigate the planning process and find enforcement mechanisms to ensure safeguards put in place are taken seriously. Where planning requires legislation or administrative hearings, advocacy can help ensure the neighborhood's voice gets heard before decisions are made. To ensure holistic focus, neighborhoods with the knowledge of redevelopment plans need community lawyers to revitalize areas nearby development to ensure the success of the entire community. This may come in the form of legal protections for community gardens, empowerment to bring code enforcement actions against irresponsible property owners, or using other nuisance abatement tools.¹⁵⁵

C. Flexible Funding

Funders play a vital role in solving these issues as well because they often dictate the priorities of nonprofits. First, funders should increase the availability of sustainable funding for trained, long-term community organizers at umbrella organizations,¹⁵⁶ community development corporations, and other nonprofits that bring together groups and build the capacity of community associations.¹⁵⁷ Second, governmental funding of health departments, emergency management, and homeland security agencies should shift priorities to allow funds to support broad community capacity building. Third, funding to spur economic redevelopment

154. This includes the creation and transactions of community development corporations, mediation providers, public spaces and community gardens, non-profit health providers, and housing counseling agencies, and putting in place safeguards to retain and benefit residents, among other tools discussed *supra*.

155. COMMUNITY LAW CENTER, STRENGTHENING BALTIMORE'S NEIGHBORHOODS: A LEGAL HANDBOOK FOR COMMUNITY ASSOCIATIONS 53–63 (2015).

156. Umbrella organizations are entities composed of community associations.

157. Jane Beckett, Sandy O'Donnell & Jean Rudd, *Fundraising Practices in Community Organizing*, 145 SHELTERFORCE ONLINE (Spring 2006), <http://www.nhi.org/online/issues/145/fundraising.html> (observing that budgets are flat and not keeping up with inflation among organizing groups, and that such groups are increasingly reliant on foundation funding).

in areas of high unemployment should work toward creating a new generation of leaders with jobs in the licit economy. These leaders could bridge the generational divides present in the communities rather than being forced to engage in the drug trade or leave to find work. Fourth, making small amounts of flexible funding available through a simple grant process to neighborhood associations to do community greening projects can have a big impact in terms of revitalization.¹⁵⁸ Finally, funders must listen to the needs of nonprofits and find the flexibility to meet those needs and sustain organizations, especially when it comes to the need to fund administrative expenses.¹⁵⁹

In addition to actively advocating for this funding, community lawyers also play a role in this process as attorneys to nonprofit community clients. While it is rare that nonprofits hire attorneys to negotiate their funding contracts¹⁶⁰ and other professionals exist to help fundraise,¹⁶¹ community lawyers are in a position to advocate for changes and to connect communities with information about funding opportunities or fundraising resources. For example, community lawyers are in a unique position by working with many different groups to make connections for collaborative funding applications. At the most basic level, community lawyers advise nonprofits in following both state solicitation registration rules and regulations and federal 501(c)(3) requirements relating to fundraising and tax filings. Legal services attorneys involved in this work even help groups avoid or reduce filing fees or fines where tax filings are mistakenly missed or fines and taxes are misapplied by a government agency. Additionally, community lawyers can help an organization institute a paid membership structure in governing documents. Not only is this a good way for the organization to meet 501(c)(3) requirements for public charities that a certain amount of funding come from the general public, but it is also a way for organizations to raise unrestricted funds and encourage residents to invest in their own neighborhood. Community lawyers can also help nonprofits access public financing, like bonds, that is available for certain types of projects and can structure nonprofits projects that earn income, an increasingly vital source of revenue for many nonprofits.

D. Simplifying the System and Uniting Across Silos

While community lawyers support the building of capacity, there are changes that could simplify their work and ease the burdens of associations

158. See *supra* Part II.C (discussion regarding clean and green programs as a powerful tool in community organizing).

159. Rick Cohen, *A Call to Action: Organizing to Increase the Effectiveness and Impact of Foundation Grantmaking*, Nat'l Comm. for Responsive Philanthropy (Mar. 2007), available at <http://www.ncrp.org/files/NCRP2007-ACalltoActionREVISED.pdf>.

160. Given the scarcity of funding, most simply sign on the dotted line without counsel for fear of scaring off funders.

161. See, e.g., Association of Fundraising Professionals, <http://www.afpnet.org/>.

unable to access attorneys. For example, in Maryland, which enjoys a relatively simple regulatory system for nonprofits, for a small nonprofit to comply with solicitation regulations and tax returns requires three different filings to different state and federal agencies.¹⁶² Even where forms are very simple and straightforward, gathering the information and navigating these systems can prove difficult for many volunteer-run nonprofits.¹⁶³ Creating a streamlined, single filing platform, shared across the federal and state agency silos,¹⁶⁴ could dramatically simplify the administrative burdens on small organizations.¹⁶⁵ Increasing exemption amounts to automatically adjust with inflation, so that small nonprofits do not have to file or do not pay a fee to file, also helps small organizations. Simplifying tax forms, as the IRS did recently with the creation of the Form 1023-EZ, Application for Recognition of Tax-Exemption,¹⁶⁶ and decreasing filing fees for smaller organizations would ease the administrative burdens of new small nonprofits. Accountants and tax preparation professionals must join attorneys in this effort. Low-income taxpayer clinics, already well-established in the same communities as community associations, should serve nonprofits alongside individuals.¹⁶⁷ Allowing tax-exempt entities to reinstate their exemption through the filing of missing years' Form 990-N would mitigate the disastrous and confusing effect this new administrative requirement is having on small organizations by diverting their limited energy and funding it toward the process of applying for reinstatement.¹⁶⁸ Community lawyers should lead the charge to encourage government agencies to reduce these regulatory burdens, which hit smallest groups the hardest.

Regardless of whether the system simplifies, all organizations should have counsel to help them understand the rules. Just as for-profit corporations receive legal advice to maximize their profits, communities need legal advice to realize their dreams. Community lawyers simplify and translate rules for their clients, helping them comply and cope with regulatory changes. A

162. COMMUNITY LAW CENTER, *HOW TO START A NONPROFIT ORGANIZATION IN MARYLAND* 84 (7th ed. 2015) (calendar listing the filing requirements of small nonprofits).

163. *See supra* Part III.D.

164. Even the smallest nonprofit organizations must file multiple forms each year to maintain their tax-exempt nonprofit status.

165. While beyond the scope of this article, a valuable conversation about how to sustain the vital work of small nonprofits has been discussed in other articles. *See* Goldscheid, *supra* note 137, at 321; Dandridge, *supra* note 97, at 695.

166. Form 1023-EZ, available at <http://www.irs.gov/uac/About-Form-1023EZ>, allows small nonprofits to utilize a streamlined, shorter form of the Application for Recognition of Tax-Exemption.

167. *Low Income Taxpayer Clinics*, IRS, <http://www.irs.gov/Advocate/Low-Income-Taxpayer-Clinics>.

168. Dandridge, *supra* note 99, at 725–26.

more robust,¹⁶⁹ well-funded legal services program to employ a new generation of community lawyers could turn this literature into a reality and better serve both the public interest and private bar communities alike.¹⁷⁰

V. Conclusion

Although community associations face great obstacles, their essential work in bringing people together, creating inclusive and welcoming communities, and solving neighborhood problems with grassroots solutions makes the challenges worth facing. While all entities must adapt to changing times, community associations in low-income, already vulnerable areas risk sliding backwards and losing hard-earned progress. Strong community associations play a key role in integration, education, public safety, protecting the environment, and civic engagement. As an aging generation of community leaders in shrinking cities faces falling funding and a rise in regulatory complexity, community lawyers must work with their clients in rising to meet these challenges. Attorneys offer both short-term and long-term assistance in helping groups meet these challenges.

In the short term, attorneys can assist in several different capacities, depending on the groups' needs. First, by drafting recruitment and retention procedures into organizational documents, attorneys help ease leadership transition challenges. By leading ongoing educational efforts, attorneys help ensure groups follow procedures as new leaders arise. Attorneys also aid in the financial realm of a nonprofit by counseling clients in collaborating on funding applications, following fundraising rules, preventing or avoiding costly fines, and accessing additional capital or earned income. By advising the creation of and supporting complimentary nonprofits, such as community development corporations, attorneys ensure the availability of multiple partners to achieve community goals. Finally, attorneys provide a strong voice of community associations by inserting and advocating for a community voice in development, demolition, revitalization efforts, and planning decisions.

In the long term, community lawyers can work in various other ways to help communities meet challenges. By supporting policies that stabilize communities, such as policies that require local hiring and deconstruction in demolition plans, community lawyers play a role in resident retention. Community lawyers also advocate for the provision of space and community benefits for residents to stay in place while communities change. Further, by encouraging the provision of flexible, increased funding for the

169. While not a comprehensive list (it does not include law school clinical programs, for example), Lawyers Alliance for New York maintains a list of pro bono providers that provide transactional legal services for nonprofit organizations in sixteen states. See <http://www.lawyersalliance.org/ProvidersNat.php>.

170. In full disclosure, the author is one of the lucky few who enjoys this type of employment and would personally stand to benefit from the funding and added network of more practitioners like herself.

community groups, community lawyers can support the long-term financial viability of community associations. Finally, by supporting reductions in regulatory burdens and assisting community associations in navigating complex regulatory systems, attorneys can help simplify processes to free up time, energy, and funding to focus on other community concerns.

Community lawyers both build and rely on the capacity of their community association clients. The stakes of this work could not be greater. Community groups contain the potential to realize the best hopes and democratic dreams of a neighborhood, a city, a country.¹⁷¹ Their attorneys must rise to the opportunity to turn their community group clients' dreams into a reality.

171. *So Goes a Nation: Lawyers & Communities* (videotape), available at <https://archive.org/details/SoGoesANation>.

