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The Housing Crisis: Who Should Be Helped?

by Mordechai Liebling

In *Mishneh Torah* 9:6 we learn: “A person who owns houses, fields, and vineyards that if sold during the rainy season would fetch a lower price than during the summer, should not be made to sell them; rather, [the person] should receive out of the proceeds of the poor person’s tithes [community tzedakah fund] up to half the value of the properties, so that the person should not be forced to sell at the wrong time.”

In last month’s column about the housing crisis, John Weicher proposed that we help individual homeowners on “the basis of objective information: the current financial situation of the homeowner and their efforts to meet their obligations,” and that deciding to help them on the basis of their motivations for borrowing the money is a “moral and practical mistake.” I certainly agree with this last statement. I also suggest that we use Weicher’s text above as a guide for approaching current challenges in the homeowner mortgage crisis.

The *Mishneh Torah* takes into account current market conditions in order to protect the homeowner and promote long-term stability in the real estate market. An agricultural economy depends on loans and the easy availability of credit; in that era a law would not be made that impeded the flow of credit (note Hillel’s famous *prosbul* negating the nonrepayment of loans made in the later years of a seven-year cycle in order to ensure credit). Our society, too, depends on the easy availability of credit.

The current economic climate is reasonably equivalent to the rainy season mentioned in the first paragraph. With housing values at a low point, a person who cannot make his or her mortgage payments ought to be helped from communal funds. The rule, though, protects the community by setting a cap; the resources of the community need to be balanced with the needs of the poor. Without sufficient public funds to bail out every mortgage, some criteria must be established.

For example, the ability to pay is an important criterion, but how much? Many of the current questionable loans are considered predatory — made in violation of the principle of “*gnivat daat*” — exercising truth in advertising or financial transactions. Tens of thousands of hardworking people who were able to pay initial mortgages cannot pay the

recalibrated mortgages that were aggressively sold to them with false marketing. These loans need to be renegotiated. There are both traditional and contemporary rules about fair lending practices and appropriate interest rates. Furthermore, low-income homeowners are less likely to default if they borrow from community development financial institutions with whom they have direct relationships.

The halakhah from the *Mishneh Torah* is also sensitive to economic cycles. With unemployment currently high and predicted to rise over the next year, perhaps “ability to pay” needs to be understood as a person’s ability to pay over time, perhaps in two or more years.

We may also find guidance in *Mishneh Torah* 10:17, which outlines the eighth, or highest, degree of tzedakah: making a loan or entering into partnership with a poor person to help that person become self-reliant. In today’s housing crisis, not making a particular loan might impoverish the individual. For many people who are facing foreclosure, all of their savings/wealth is tied up in their homes. From the standpoint of tzedakah, one of the criteria for granting redress might be the number of (meaning, how few) other financial assets the person has.

Finally, the wellbeing of the community as a whole is an essential Jewish value. Everyone loses when homes are foreclosed: neighborhoods deteriorate and property values decline, especially in poorer neighborhoods. The economy as a whole will not recover from a recession until the housing market becomes healthy. Jewish texts offer clear guidelines about how to confront today’s economic crisis — how to use resources to renegotiate and sometimes subsidize mortgages. The strategic use of public funds today will cost the taxpayer far fewer dollars than allowing mass foreclosures.

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