

COMMUNITY LAND TRUSTS: AN OVERVIEW

Since the Community Land Trust (CLT) model was developed in the 1960s, over 250 CLTs have been established in 47 states across the U.S. The 1992 Federal Housing and Community Development Act defined the community land trust as a type of Community Housing Development Organization (CHDO) and provided specifically for funding for CLT/CHDOs under the HOME program. The model is increasingly being utilized in communities across the country as mechanism either to preserve housing affordability over the long term or as a strategy to prevent the displacement of lower-income households that all too typically accompanies successful neighborhood revitalization strategies – or both.

In brief, community land trusts are community-based organizations whose missions include permanent stewardship of land for community benefit and perpetual preservation of the affordability of housing on that land. CLTs make it possible for limited-income households to own homes on land that is leased from the CLT through long-term (typically 99-year), renewable ground leases. In a CLT arrangement, the homeowner holds the deed to his or her home but leases the land on which the home sits from the CLT.

Key Components of the Ground Lease

The ground lease is the legally binding agreement that gives the homeowner/homeowner the right to use the land. It describes in full the rights and responsibilities of the homeowner and of the CLT, as well the restrictions that govern the relationship. The lease attempts to balance the interests of the homeowner as a homeowner with the long-term interests of the CLT and the community in which it operates.

There are a number of critical agreements defined by the CLT's ground lease. These include:

- ❑ **99-year term** - The lease is typically for 99 years, providing long-term security and access for the homeowner. The lease is also renewable by the homeowner – or his/her heirs – for an additional 99-year term.
- ❑ **Responsible Use** - The homeowner can only use the land for residential purposes as permitted by building and land use codes and regulations. The homeowner is responsible for responsible use of the land and the improvements located thereon – and for responsible behavior by anybody who uses the premises – in accordance with applicable laws and regulations.
- ❑ **Owner Occupancy** - The homeowner must live in her home for a minimum period of time (typically at least eight months) of every calendar year.
- ❑ **No Subletting** - Homeowners are typically not allowed to give the lease or rent their Improvements without the prior written permission of the CLT's board of directors.
- ❑ **Inspection** – CLTs reserve the right to inspect the leased premises (the land) but, typically, not the home in a reasonable manner, with adequate notice given.
- ❑ **Lease Fee** – The homeowner pays a modest monthly ground lease fee (typically in the range of \$20-\$50 per month) to the CLT in exchange for access to and use of the leased premises.
- ❑ **Taxes and Assessments** – The homeowner is responsible for the payment of all real estate taxes on the land and on the Improvements.

- ❑ **Improvements** - The homeowner owns all buildings, structures, fixtures and any other improvements (such as landscaping) on the land. The CLT, however, controls the use and sale of these Improvements.
- ❑ **Construction and Alteration** – The homeowner is allowed to build or change the Improvements only with the written permission of the CLT and if it meets the following conditions:
 - a) all costs are borne by the homeowner
 - b) work must be done in a professional manner and comply with all applicable laws, ordinances and regulations.
 - c) the work must be for a use consistent with those permitted by the lease,
 - d) all plans and permits must be submitted to the CLT prior to initiating any construction.
- ❑ **Financing** - There is a provision in the lease that describes “permitted mortgages”, which include those from federally regulated institutional lenders. These provisions deal specifically with foreclosure proceedings designed to protect the interest of the lender, the borrower and the landowner.
- ❑ **Transfer to Heirs** - The homeowner may leave, give or sell their home to designated heirs, including
 - a) spouse
 - b) child or children
 - c) member(s) of the Homeowner’s household who have resided upon the Premises for at least one year prior to Homeowner’s death.
- ❑ **Transfer to Income-Qualified Buyers** – The homeowner may sell or transfer to their Improvements. However, the home (Improvements) can only be sold to the CLT or an income-qualified buyer – typically defined as percentage of the local median income, adjusted for family size – and not for more than a price that is capped by a specified "Resale Formula."
- ❑ **CLT’s Preemptive Option** – CLT’s typically stipulate in the ground lease its preemptive option to purchase the property in the event that the homeowner/homeowner elects to sell their Improvements (rather than transfer their leasehold interest to a designated heir).

Resale Formula

The primary feature distinguishing community land trusts from every other type of housing production and subsidy program is the CLT’s effort to balance the interests of the homeowner/homeowner with the community’s goals of preserving long-term affordability for future households. Each CLT designs its own resale formula in an effort to strike a balance (within the context of local circumstances) between the goal of allowing a fair return for the seller of a home and the goal of limiting resale prices to a level that will assure continued affordability.

There are a number of formulas used by CLTs to determine the resale price and the amount of appreciation that is allowed to the CLT homeowner selling his/her home. Many CLTs determine to use the most commonly used formula, the *appraisal-based* resale formula. Using this method, the maximum resale price is established by adding to the original purchase price a specified percentage (typically 25-30%) of the appreciation in the market value of the property (land and improvements) as measured by the difference between appraised value of the property at the time of purchase and appraised value at the time of resale. It is anticipated that this formula will provide a fair return to the seller and assure affordability for the

subsequent buyer – without requiring any additional affordability subsidy.

While most lenders take a particular interest in a CLT's resale formula, it is important to note that the specific nature of a resale formula has no bearing on the value of the mortgagee's collateral in a foreclosure situation, since CLT ground leases provides for the removal of resale restrictions in the event of foreclosure or the taking of a deed in lieu.

Mortgage Financing for CLT Homebuyers

For mortgage lenders, financing for the purchase of CLT homes involves two factors that are not present in the case of more conventional home mortgage loans:

- 1) The collateral for the loan consists of the Improvements and the leasehold interest in the land, not the fee interest in the land; and
- 2) The restrictions on resale and occupancy affect the value of the collateral further.

These factors do not prohibit mortgage financing for CLT homebuyers, but most residential mortgage lenders have little experience in dealing with the issues involved. For this reason, CLTs have been particularly concerned with working with lenders to arrange appropriate mortgage financing for their homebuyers.

Virtually all CLT ground lease makes certain specific provisions for mortgagees, including (1) assurances that the lease cannot be terminated during or subsequent to a foreclosure process, and (2) provision for the removal of certain restrictions, including resale restrictions, in the event of foreclosure or the taking of a deed in lieu, so that the collateral can be freely liquidated if necessary. These ground leases also give the CLT opportunities to cure a mortgage default by a homeowner or otherwise work out a default situation. In fact, the presence of the community land trust/lessor as an interested third party to the lender-borrower relationship gives most mortgage lenders considerable comfort.

Many community land trusts, with the help of the Community Reinvestment Act, are able to find local lenders that would work with their homeownership programs and would hold a certain number of CLT home mortgages in portfolio. More recently, however, larger CLT initiatives have created a need for larger volumes of homebuyer financing. To meet this need, community land trusts have turned to the mortgage products of state housing finance agencies and private secondary market institutions. Rural CLTs have also gained access to financing through Rural Development's 502 program. To facilitate this process, technical assistance organizations like Burlington Associates have, over time, worked directly with Fannie Mae, and Rural Development, among others, to gain approval of a "model" ground lease (which forms the basis of most CLTs' ground leases) and, when necessary, to develop specialized ground lease riders that accommodate the special concerns of these institutions.

It bears noting that, due to the commitment that CLTs across the country make to stand behind and assist their homeowners in their efforts to become and remain successful, the performance of CLT homeowner mortgages is dramatically superior to all other mortgages. For example, the nationwide foreclosure rate for all mortgages in 2010, according to the Mortgage Bankers Association, was 4.63%. During this same year, the foreclosure rate for CLT homeowner was a rather remarkable .046% – or 1/10th of the national foreclosure rate. Similar information is currently being compiled for 2011.