Starting a Community Land Trust

ORGANIZATIONAL AND OPERATIONAL CHOICES

Revised Edition
April 2007

A shorter version of this introductory manual was prepared by John Emmeus Davis for the MacArthur Foundation and the City of Chicago in 2001. It was later distributed by the Institute for Community Economics under the title of *Options and Issues in Creating a Community Land Trust*. The current manual, correcting, updating, and expanding the earlier edition, was undertaken at the author's initiative.

Cite as:

John Emmeus Davis. 2007. *Starting a Community Land Trust: Organizational and Operational Choices*. Burlington, VT: Burlington Associates in Community Development.

Additional copies of this publication can be purchased through the CLT Resource Center on the Burlington Associates website: www. burlingtonassociates.com

Forward

Those of us who provide technical assistance to new community land trusts are often asked "how long does it take to start a CLT?" Our cautious answer, as with so many of the questions we regularly receive about the organization and operation of a CLT, must be *"it all depends on the choices you make."* Some sponsors move quickly in deciding the kind of organization they want to create – and make decisions that allow for the rapid development of their CLT. Some sponsors take much longer – and make decisions about educating their community, funding their operations, or pursuing one type of activity over another that delay the day until their CLT is up and running.

Going slow is often a very good thing. Too many groups in recent years have rushed to incorporate a CLT and to develop their first projects without paying nearly enough attention to how the CLT itself should be organized and operated. There are other groups, on the other hand, who spend so much time weighing the options and worrying the details of establishing a CLT that they never manage to acquire enough lands or to build enough houses to make much of a difference in their own communities.

Part of the challenge in starting a CLT is being diligent and inclusive about deciding, without getting stuck. That is the challenge taken up by the present manual. It cannot inoculate against the possibility of bogging down in perpetual deliberations, of course, but it does provide a serum for healthy discussion and timely decision.

Seldom does this manual say what the "right" decision should be. Starting a community land trust is not a process of lifting a box of pre-measured ingredients off the kitchen shelf and following a predetermined recipe guaranteed to produce the same cookie-cutter product every time. Different communities – large or small, urban or rural, prosperous or poor – have different conditions, priorities, politics, and needs. The right process and the right decisions for starting a CLT in one community may not be right for another. But the *list* of decisions is mostly the same. There are organizational and operational choices that every would-be sponsor of a CLT must face, regardless of the community for which a new CLT is being planned. There are decisions that everyone must make.

To support and to spur such decision-making, this manual points out those choices that matter the most in the early days of planning a CLT. It presents the range of options for making each decision and reviews the pros and cons that should be weighed in selecting one course of action over another. These are choices that precede more technical deliberations over bylaws, ground lease, resale formula, and the like – topics covered elsewhere in publications like the *CLT Legal Manual* and the many materials posted on-line at the "CLT Resource Center" (www.burlingtonassociates.com/resources). Starting a CLT starts with basic questions of why, where, when, and who. The how comes later.

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The Diverse World of Community Land Trusts

***Summary**: The community land trust (CLT) is a model of great versatility, leading to wide variation in the ways in which the CLT is structured and applied. The key features of the "classic" CLT are described in the present chapter, along with the model's most common variations.*

VARIATIONS ON A THEME OF "CLT CLASSIC"

The community land trust combines a new approach to the *ownership* of land, housing, and other real estate with a new approach to the *organization* of the nonprofit steward of this property. The basic features of the CLT model were outlined in *The Community Land Trust: a Guide to a New Model for Land Tenure in America*, published by the International Independence Institute in 1972. Ten years later, the Institute for Community Economics (ICE), successor to the International Independence Institute, refined and extended the CLT model in another publication, the *Community Land Trust Handbook*, in which a new emphasis was placed on the CLT's potential for producing and preserving affordable housing and for developing lower-income communities without displacing lower-income people. In 1992, ICE's refinement of the CLT model was enshrined in federal law in a definition approved by Congress (see Appendix A). Although there is much variation among the 200 CLTs already in existence or under development in the United States, there are ***ten*** key features that are found in most of them. These features, defining and distinguishing what may be called the "classic" CLT, are described below. Described as well are the most common variations occurring in each of these features.

Nonprofit, Tax-exempt Corporation

<u>CLT Classic:</u> A community land trust is an independent, not-for-profit corporation that is legally chartered in the state in which it is located. Most CLTs target their activities and resources toward charitable activities like providing housing for low-income people, combating community deterioration, and lessening the burdens of government. Most CLTs, accordingly, seek and obtain a 501(c)(3) designation from the IRS.

<u>CLT Variations</u>: Although CLTs are usually created "from scratch," as newly formed, autonomous corporations, some have been established as successors, affiliates, or programs of an older nonprofit. Either a pre-existing nonprofit transforms itself into a community land trust or grafts selected elements of the CLT model onto its own structure and programs. Sometimes, when a new CLT is established within the corporate shell of a pre-existing nonprofit, the CLT becomes a permanent part of the nonprofit's on-going operations. Alternatively, this may be a temporary, transitional arrangement, where the CLT is spun off as a separate corporation when it has the capacity and constituency to thrive by itself.

Nearly all CLTs are chartered as a nonprofit corporation or housed within a nonprofit corporation. Most have a 501(c)(3) tax exemption from the IRS. In a few cases, however, a local government or municipal corporation (like a public housing authority) has developed and managed resale-restricted, owner-occupied housing on leased land, administering a program that resembles a CLT. Not every CLT has secured a 501(c)(3) designation, moreover, either because they have chosen not to serve a population that is "poor, distressed, or underprivileged" or because the IRS has determined that the applicant fails to meet the organizational and operational tests for receiving 501(c)(3) status.[1]

Dual Ownership

CLT Classic: A nonprofit corporation (the CLT) acquires multiple parcels of land throughout a targeted geographic area with the intention of retaining ownership of these parcels forever. Any building that is already located on the land or that is later constructed on the land is sold to another party. The building's buyer may be an individual homeowner, a cooperative housing corporation, a nonprofit organization or limited partnership developing rental housing, or any other nonprofit, governmental, or for-profit entity.

CLT Variations: Although dual ownership is a characteristic of every organization that calls itself a community land trust, buildings that are renter-occupied are sometimes treated differently than buildings that are owner-occupied. Some CLTs, when dealing with multi-unit rentals, whether residential or commercial, retain ownership not only of the underlying land but of the buildings as well. Some CLTs, when accepting limited-equity condominiums into their portfolios, have not owned the underlying land. They have retained ownership only of a durable right to repurchase these condominiums for an affordable, formula-determined price when their current owners someday decide to sell.

Leased Land

CLT Classic: Although CLTs intend never to resell their land, they provide for the exclusive ***use*** of their land by the owners of any buildings located thereon. Parcels of land are conveyed to individual homeowners (or to the owners of other types of residential or commercial structures) through inheritable ground leases that typically run for 99 years. This two-party contract between the landowner (the CLT) and a building's owner protects the latter's interests in security, privacy, legacy, and equity, while enforcing the CLT's interests in preserving the appropriate use, structural integrity, and continuing affordability of any buildings located upon its land.

[1] See "Tax-Exempt Status for Community Land Trusts," Chapter Six in the *Community Land Trust Legal Manual* (Springfield, MA: Institute for Community Economics, 2002).

CLT Variations: Every CLT uses a long-term ground lease for the conveyance of land. Most of these leases are based on the "model CLT ground lease" developed and refined by ICE over the past 30 years. The exact terms and conditions contained in these two-party contracts, however, can vary greatly from one CLT to another, especially with regard to restrictions on using, subletting, improving, and reselling the buildings that are located on the CLT's land.[2] Condominiums present a special case, however, where ground leasing is not always possible. Although some condominiums are located on land that is leased from a CLT, there are many cases where a CLT has acquired title to a portion of the condominiums in a large, multi-unit project for which the CLT does not own the underlying land. This has happened most frequently when a CLT has been the beneficiary of a municipality's inclusionary housing program and been assigned long-term responsibility for monitoring and enforcing durable controls over the occupancy, eligibility, and affordability of these inclusionary units required by the municipality.[3]

Perpetual Affordability

CLT Classic: The CLT retains an option to repurchase any residential (or commercial) structures located upon its land, whenever the owners of these buildings decide to sell. The resale price is set by a formula contained in the ground lease that is designed to give present homeowners a fair return on their investment, while giving future homebuyers fair access to housing at an affordable price. By design and by intent, the CLT is committed to preserving the affordability of housing (and other structures) – one owner after another, one generation after another, in perpetuity.

CLT Variations: While perpetual affordability is a commitment of every CLT, the formula that defines and enforces affordability varies greatly from one CLT to another. This is due, in part, to the different methods that CLTs can adopt in calculating the resale price of housing that is located upon the CLT's land. Different formulas may also result from the different goals that particular CLTs are trying to achieve or the different populations they are trying to serve. Furthermore, while the vast majority of CLTs adopt a single resale formula, covering all types and tenures of housing within their portfolio – and covering every neighborhood in which they work – a few CLTs have begun to fine-tune their resale formulas to allow some variation among different portions of their housing stock (distinguishing, for example, among detached, single-family houses, condominiums, and cooperatives). A few others have tailored their resale formulas to account for varying conditions within hot and cold sub-markets of their regional service area.

[2] See "Design: Contractual Controls over Use and Resale," Chapter Three in John Emmeus Davis, *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-occupied Housing*. (Montclair, NJ: National Housing Institute, 2006).
[3] CLT development of condominiums is discussed more fully in a later chapter (*Special Topics*).

Perpetual Responsibility

<u>CLT Classic:</u> The CLT does not disappear once a building is sold to a homeowner, a co-op, or another entity. As the owner of lands underlying any number of buildings and as the owner of an option to re-purchase those buildings for a formula-determined price, the CLT has a continuing interest in what happens to these structures – and to the people who occupy them. The ground lease requires owner-occupancy and responsible use of the premises. Should buildings become a hazard, the ground lease gives the CLT the right to step in and to force repairs. Should property owners default on their mortgages, the ground lease gives the CLT the right to step in and cure the default, forestalling foreclosure. The CLT remains a party to the deal, safeguarding the structural integrity of the building and the residential security of the occupants.

<u>CLT Variations</u>: Some CLTs provide a full menu of pre-purchase and post-purchase services. They go to great lengths to prepare people for the responsibilities of homeownership and to support their homeowners, in good times and bad. Other CLTs do little more than monitor and enforce the occupancy, eligibility, and affordability controls embedded in the ground lease and intervene only to prevent the loss of a building faced with foreclosure. The intensity of a CLT's post-purchase involvement in the housing situations of its leaseholders depends largely upon a CLT's capacity. It is also affected, however, by the CLT's own preferences and concerns, as each CLT struggles to find an acceptable, sustainable balance between "backstopping" the success of its newly minted homeowners and leaving them alone to enjoy the privacy and independence that homeownership is supposed to bring.

Open, Place-based Membership

<u>CLT Classic:</u> The CLT operates within the physical, geographic boundaries of a targeted locale. It is guided by – and accountable to – the people who call this locality their home. Any adult who resides on the CLT's land and any adult who resides within the geographic area that is deemed by the CLT to be its "community" may become a voting member of the CLT.

<u>CLT Variations:</u> Nearly every CLT is a membership organization, drawing its members from a community that is geographically defined. Within the diverse world of CLTs, however, there is considerable variation in the size of that "community" and in the make-up of that membership. A decade ago, the community served by most CLTs was a single urban neighborhood or a small rural town. That has changed. Many CLTs created in recent years have staked out a much wider service area, encompassing multiple neighborhoods, an entire city, an entire county, or, in a few cases, a multi-county region. There are many variations, as well, in the composition and role of the CLT's membership. Some CLT's have opened their membership to individuals who reside outside of the CLT's target area. Other CLT's have expanded their membership beyond individuals, allowing nonprofit corporations, local governments, or private institutions like hospitals, churches, businesses, or a community foundation within their service area to become voting members of the CLT. There are a few CLTs with no membership, although these tend to be situations where the CLT has been established as a subsidiary or an internal program of an existing community development corporation that has a membership of its own, or no members at all.

Community Control

CLT Classic: Two-thirds of a CLT's board of directors are nominated by, elected by, and composed of people who either live on the CLT's land or people who reside within the CLT's targeted "community" but do not live on the CLT's land.

CLT Variations: Nearly every CLT has a board of directors that is elected, in part, by the residents who make up its membership. There are many variations, however, in the process of nominating new directors, in the process of selecting those directors, and in the percentage of the board that is directly elected by the CLT's membership. There are a few CLTs where the board is appointed in its entirety by a municipal government, by a community foundation, or by some other corporate sponsor.

Tripartite Governance

CLT Classic: The board of directors of the "classic" CLT is composed of three parts, each containing an equal number of seats. One third of the board represents the interests of people who lease land from the CLT ("leaseholder representatives"). One third represents the interests of residents from the surrounding "community" who do not lease CLT land or live in CLT housing ("general representatives"). One third is made up of public officials, local funders, nonprofit providers of housing or social services, and other individuals presumed to speak for the public interest ("public representatives"). Control of the CLT's board is diffused and balanced to ensure that all interests are heard but that no interest is predominant.

CLT Variations: Although every CLT board is distinguished by both a diversity of interests and a balance of interests, the exact make-up of this governing board can vary widely from one CLT to another. Every CLT board has leaseholder representatives, for example, but some CLTs subdivide this leaseholder category among directors who represent the interests of leaseholders occupying single-family homes and those occupying co-op units or commercial buildings. CLTs that are managing rental housing may reserve a leaseholder seat for a tenant. Every CLT has public representatives, but some CLTs fill these seats exclusively with representatives of local or state government, while others include representatives of local churches, foundations, banks, social service agencies, tenant rights organizations, or community development corporations within this "public" category. Many start-up CLTs, moreover, have interim boards that may be composed (and appointed) quite differently than the broadly representative, membership-elected, tripartite board that will ultimately govern the CLT.[4]

Expansionist Acquisition

CLT Classic: CLTs are not focused on a single project that is located on a single parcel of land. They are committed, instead, to an active acquisition and development program, aimed at expanding the CLT's holdings of land and increasing the supply of affordable housing (and other types of buildings) under the CLT's stewardship. A CLT's holdings are seldom concentrated in one corner of its service area, moreover, but tend to be scattered throughout the CLT's territory so they are indistinguishable from other housing within the same community.

CLT Variations: Every CLT has an eye toward expanding the number of acres and buildings that are brought into its domain of nonspeculative ownership, but the scale and pace of acquisition can vary widely from one CLT to another. This is due, in large measure, to factors outside of a CLT's control, like the cost of buildable sites and the availability of grants and loans. An acquisition strategy is also a function, however, of a CLT's own priorities in choosing who to serve, what to build, and where to work. Some CLTs have grown quite slowly, each year purchasing a few parcels of land on which are constructed (or rehabilitated) a handful of single-family houses. Other CLTs have grown rather rapidly, benefiting from private donations or public largess that have allowed for the acquisition of larger parcels of land and the steady development of many units of housing. Regardless of the magnitude of their development activity, which may ebb and flow over the years, most CLTs stay committed to adding more land to their holdings and to bringing more resale-restricted, owner-occupied housing under their stewardship.

Flexible Development

CLT Classic: The CLT is a community development tool of uncommon flexibility, accommodating a variety of land uses, property tenures, and building types. CLTs around the country construct (or acquire, rehabilitate, and resell) housing of many kinds: single-family homes, duplexes, condos, co-ops, SROs, multi-unit apartment buildings, and mobile home parks. CLTs create facilities for neighborhood businesses, nonprofit organizations, and social service agencies. CLTs provide sites for community gardens and vest-pocket parks. Land is the common ingredient, linking them all.

CLT Variations: There is enormous variability in the projects CLTs pursue and the roles they play in developing them. Some CLTs focus on a single type of housing, like attached townhouses. Some focus on a single tenure, like owner-occupied housing.

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[4] This topic is discussed in greater detail in a later chapter. See "Variations in Governance Structure" under *Special Topics*.

Others, embracing a more comprehensive mission like revitalizing an entire neighborhood, rebuilding a locality's housing tenure ladder, or redistributing the benefits and burdens of regional growth, take full advantage of the model's flexibility in undertaking an array of residential and commercial projects. Most CLTs do their own development, initiated and supervised by their own staff. Others leave development to nonprofit or governmental partners, confining their efforts to assembling land, leasing land, and preserving the affordability of any housing located upon it. Between these two extremes of the CLT-as-developer and the CLT-as-steward lie a variety of roles that different CLTs have embraced in expanding their domain.

CAUSES OF CONTINUING VARIATION

The majority of the nation's CLTs incorporate into their organizational structure and their on-going operations most – if not all – of the ten features characteristic of the "classic" CLT. Most of the variations occurring in the model are the result of tailoring the model's most flexible features, especially the resale formula and the development agenda, to meet local circumstances and needs. These variations occur within the framework of the model's basic structure. They do little to alter the structure itself.

Other variations, like establishing a CLT within the corporate shell of another nonprofit, extending the CLT's service area beyond a single neighborhood or town, or modifying the make-up of the CLT's membership or board, go much further in altering the CLT's "classic" structure. Despite these variations, the model's core commitments to land stewardship, perpetual affordability, perpetual responsibility, a balanced structure of governance, and organizational accountability to the people housed by the CLT and to the people residing in the surrounding locale are retained by most organizations that call themselves a CLT.[5]

Experimentation and variation in the model's make-up continues, as the CLT is adapted to new conditions and is applied in different ways. The most common and influential of the factors giving rise to such innovation are the following:

- **DENSITY OF THE ORGANIZATIONAL LANDSCAPE**. In communities where many nonprofit housing development organizations already exist, it has sometimes made more sense to establish a CLT under the sponsorship – or inside the corporate shell – of another nonprofit, instead of starting a new corporation from scratch. At other times, in other places, an independently incorporated CLT has sought a special niche within a densely populated organizational landscape by focusing on functions or roles that are not only different than those of existing nonprofits but also different than those that "classic" CLTs have traditionally embraced.

[5] The National CLT Network, incorporated in 2006, has recognized – and embraced – the model's variability in its own criteria for membership. An organization may become a member of the Network either by exhibiting characteristics of a "classic" CLT, based upon the 1992 federal definition of a CLT, or by meeting organizational and operational criteria for a "CLT Variation." The latter criteria include the "core commitments" listed above. Membership standards for the National CLT Network can be found in Appendix B.

- **DENSITY OF RESIDENTIAL DEVELOPMENT**. In communities where buildable land is very expensive, housing development is usually more practical and economical when it takes the form of multi-unit condominiums, cooperatives, rentals, or densely sited manufactured housing. Multi-unit housing works well with a CLT, but it requires modifications in the CLT's ground lease. It may also engender modifications in the structure of a CLT's membership and its governing board. That is not to suggest that the "classic" CLT is to be found only in communities where detached, single-family houses on separate parcels of land are the primary form of housing production. It ***is*** to say that the experience of developing multi-unit housing has often been a spur to innovation, causing several variations in the "classic" model.

- **PRIORITIES & REQUIREMENTS OF FUNDERS**. Changes in the model are sometimes provoked by the demands – some reasonable, some not – of public agencies and private lenders on which a CLT must depend for the funding that makes its projects possible. Innovation may also occur when a municipality looks to a CLT to serve as the long-term steward for occupancy, eligibility, and affordability controls mandated by the municipality -- not only for publicly-subsidized housing on a CLT's land but for inclusionary housing scattered throughout larger residential projects under which the CLT does not own the underlying land.

- **MARKETING AN UNFAMILIAR MODEL**. The CLT is sometimes modified to make an unfamiliar model of homeownership look and feel more like the deal that is typically offered to more affluent households when buying a home on the open market. By tinkering with the bundle of rights and responsibilities that are provided to a CLT leaseholder/homeowner, especially those affecting the use, improvement, and resale of the CLT home, CLTs seek a workable balance between a form of property that is different enough from traditional homeownership to protect the long-term interests of the community, but close enough to traditional homeownership to attract the investment and support of the individual homebuyer.

- **DEVELOPMENT vs. ORGANIZING**. It is difficult for any community-based housing development organization to wear two hats. As a developer, a CLT is accountable to a constellation of funders, contractors, deadlines, and demands that drive the business of getting affordable housing constructed and occupied. As an organizer, the CLT is accountable to a constellation of interested parties who lease its land, reside in its community, make up its membership, and serve on its board. While the "classic" CLT serves both sets of interests, this balancing act is not always to everyone's liking. For CLTs that favor development over organizing, especially where a CLT program has been grafted onto the structures and programs of an existing community development corporation or where a CLT has been initiated by a municipal government, there has been a tendency to modify, dilute, or even abandon membership features or board features that make a CLT directly accountable to a local constituency of lower-income residents. For CLTs that favor organizing over development, there has been a tendency to spend more time building and sustaining the organization than building and managing an expanding stock of affordable housing.

The most successful CLTs have found a balance between these two extremes, even when modifying basic features of the "classic" CLT.

- **REGIONAL OPPORTUNITIES & RESOURCES**. Many CLTs are tempted to expand the territory and to modify the structure of the "classic" model because of opportunities and resources available to them only if they operate on a regional basis. Pulled by the prospects of doing more (or getting more), they may also be pushed by the demands of local constituents who want a wider choice of place in seeking a CLT home.

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Because of factors such as these, the world of CLTs has become increasingly diverse. The model has continued to change. Indeed, much of the growth in the CLT movement in recent years can be attributed to the model's unique plasticity. Something is lost whenever fundamental features of the "classic" CLT are altered, for there are sound philosophical and practical reasons for every one of them, but something of value may also be gained. Over time, some of these variations will be discarded, while others may prove so beneficial, so successful that they eventually become a permanent part of what the "classic" CLT is defined to be. The community land trust remains a dynamic model, which is a large part of its strength and appeal.

Rationale

Summary*: The CLT's ability to serve individual interests and community interests that are often in conflict is a key to understanding the model's proliferation and appeal. Benefits do not accrue only to a fortunate few at the expense of the larger community – nor vice versa. Such a "balanced property arrangement" allows the CLT to be used in many different settings, addressing a variety of needs. The most common reasons for starting and supporting a CLT are reviewed in the present chapter.*

BALANCING THE BENEFITS OF RESIDENTIAL PROPERTY

The contractual and organizational mechanisms of the CLT are designed to maintain an equitable and sustainable balance between the legitimate interests of individuals and the legitimate interests of a larger community. The CLT is a "balanced property arrangement," allocating the benefits of land and housing more fairly than most other forms of tenure. As described in *The Community Land Trust Handbook*[6]:

> *"What one individual does to secure his or her interests may interfere with the interests of other individuals or the community. And what the community does to secure its interests may interfere with the interests of individuals. A satisfactory property arrangement must not advance the interests of one individual or group at the expense of another. Any effectively balanced arrangement requires that there be agreement not only on what the legitimate interests are but on how they are limited by each other. It also requires that there be effective means of enforcing these limitations so that one interest does not overrun another."*

The CLT is an alternative approach to the ownership of land and housing. It is designed to deliver – and to balance – two sets of benefits: those that accrue to persons who own and occupy a CLT's resale-restricted homes *(individual benefits)* and those that accrue to the advantage of the surrounding community or, more generally, to the advantage of society as a whole *(community benefits)*. Market-rate homeownership and market-rate rentals, by contrast, tilt more heavily toward the individual, directing most of the benefits of residential property toward those who are fortunate enough to own it. Much of the housing that is publicly owned, publicly subsidized, or publicly regulated is tilted more heavily toward protecting the community's investment and the community's interests, often at the expense of the occupants' interest in building assets and gaining control over their personal living space.

[6] Institute for Community Economics. 1982. *The Community Land Trust Handbook.* Emmaus, PA: Rodale Press:

The community land trust (along with other forms of shared equity homeownership[7]) is committed to correcting this historic imbalance, endeavoring to bring the interests of individuals and the interests of community into closer alignment. In the CLT, the benefits derived from owning, using, improving, and conveying residential property are pursued in relation to one another. Every benefit realized by an individual homeowner is "effectively balanced" by a corresponding benefit realized by the larger community. Neither is pursued totally in isolation from the other. Neither is secured totally at the expense of the other. Expanding affordability for the present generation of lower-income homebuyers, for example, is balanced against preserving affordability for future generations of lower-income homebuyers. Enhancing residential security for individual homeowners is balanced against enhancing neighborhood stability and preventing the displacement of lower-income households. Creating private wealth is balanced against retaining public wealth. Enabling mobility for individuals who own a CLT home is balanced against improving conditions for all who inhabit a particular locale.

COMMON REASONS FOR STARTING AND SUPPORTING A CLT

This commitment to a "balanced property arrangement," to which every CLT subscribes, provides a multi-faceted rationale for starting and supporting a CLT. Different parts of this rationale are prominent and persuasive in different communities, depending on the political, economic, and social conditions within that locale. Different priorities may be assigned to these reasons by the governmental officials who are funding CLT projects, the private lenders who are financing them, and the community activists who are promoting them.

Developing Communities without Displacing People

The CLT provides for the revitalization of disinvested or transitional neighborhoods, while preventing the removal of the low-income or moderate-income people who may have long lived there. By gaining control of its own land and by ensuring that a portion of its housing will always be available and affordable for persons of modest means, a community can attract new investment and new residents without making it impossible for the community's present residents to remain. A local CLT can also complement smart growth policies at the regional level. When established in an inner-city neighborhood or an inner-ring suburb, the CLT can serve as a bulwark against rising prices and displacement pressures that often mount when anti-sprawl measures redirect investment toward the urban core instead of the suburban periphery.

[7] "Shared equity homeownership" includes deed-restricted houses, townhouses, and condominiums, community land trusts, limited equity cooperatives, and variations of each. See: John Emmeus Davis. 2006. *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-Occupied Housing*. Montclair, NJ: National Housing Institute.

Perpetuating the Affordability of Privately Owned Housing

Housing that is made affordable initially through public subsidies, private donations, or public measures like inclusionary zoning is kept affordable continually. The ground lease used by the CLT is an effective, enforceable, and durable mechanism for ensuring that future generations of low-income and moderate-income households will have access to the same opportunity for affordable housing that is being created for these targeted populations today. Furthermore, the administrative systems that a CLT establishes to monitor and to enforce the affordability, occupancy, and eligibility controls that are built into its ground lease may also be used to monitor and to enforce similar controls that are incorporated into the deed covenants of housing that is not on leased land. The CLT can serve as the long-term steward for ***any*** type or tenure of housing for which a public agency or a private donor has committed itself to ensuring the housing's continuing availability and affordability for persons of modest means.

Retaining the Public's Investment in Affordable Housing

Whenever public or private funds are used to subsidize the initial affordability of residential units (single-family houses, condos, etc.), those scarce subsidies are protected and recycled in those units forever. In contrast to policies and programs where subsidies are either claimed by the property's owner at resale (subsidy removal) or re-claimed by the public agency that invested them (subsidy recapture), the CLT is committed to locking those subsidies in place (subsidy retention). When assisted homes are resold, an additional infusion of public or private monies will usually not be needed. The community's investment is neither lost nor diminished.

Protecting the Occupancy, Use, Condition & Design of Affordable Housing

The CLT provides an effective, enforceable, and durable mechanism not only for preserving the affordability of housing, but for preserving the occupancy, use, condition, and design of that housing as well. Embedded in the ground lease – or embedded in the deed covenant, if the CLT is also serving as the steward for deed-restricted housing – are provisions typically requiring the housing to be continually occupied as the owner's principal residence for at least ten months out of every year; restricting the housing's use as a sub-leased rental property; requiring the housing to be kept in good repair; and requiring the housing to be maintained or improved in compliance with local building and zoning codes and in accordance with the CLT's own guidelines and approvals.

Assembling Land for a Diversity of Development

The CLT assembles land through purchase, donation, or bargain sale and then makes land available to a wide range of developers for a wide range of uses. The types and methods of development that can occur on lands that are owned by a CLT are limitless. The model has the flexibility to combine uses of land, levels of income, types of housing, and tenures of housing within the same project – or in different projects. These projects may be developed on contiguous parcels of land or may be scattered throughout an entire city, county, or region.

Enabling the Mobility of Low-income People

Every CLT adds at least one new rung into a locality's housing tenure ladder, bridging the yawning gap that has opened up in many parts of the country between market-priced rentals and market-priced homeownership. Some CLTs fill this gap with multiple rungs, developing not only detached, owner-occupied houses on lands that are leased from the CLT, but developing duplexes, triplexes, limited equity condominiums, and limited equity cooperatives as well. (Some CLTs also develop and manage rental housing.) By multiplying the choices available to people when they seek to change the type and tenure of their housing, CLTs allow persons of modest means to move more easily from one form of tenure to another, improving their housing in smaller, more manageable steps. As an increasing number of CLTs expand their service area, moreover, developing affordable housing on a regional basis, mobility can also assume a geographic dimension. Low-income households can be given both a choice of housing and a choice of place.

CLTs create an opportunity for economic mobility too. A ceiling is imposed on the resale price of CLT homes in order to preserve their affordability for the next generation of low-income homebuyers. Despite this limit, the assets of CLT homeowners are enlarged. Most of them build wealth, as they occupy a CLT home and when they resell. Compared to the renters they were and the renters they would have likely remained, had they *not* purchased a CLT home, most low-income households will be better off financially for having bought a home through the CLT.

Backstopping the Security of First-time Homeowners

Too many first-time homeowners, especially those of limited income, fragile health, or physical or mental disability, eventually find they cannot bear the burden of owning a traditional, market-rate home – at least not by themselves. Too many of them eventually fail in maintaining and retaining the homes that were theirs, with disastrous results for those who fall back into renting and for the surrounding community. When a CLT puts low-income and moderate-income households into homeownership situations, however, the CLT protects their homes in times of trouble, intervening to cure defaults and prevent foreclosures. The housing is protected. The households are protected. The lenders are protected. A CLT remains permanently responsible for the homeownership opportunity it helped to create, safeguarding everyone's investment.

Sponsorship

Summary*: Community land trusts have been started by grassroots activists, public officials, other nonprofit organizations, or private employers. Sponsorship, in this context, refers to the entity that provides the impetus for a new CLT and plays the leading role in getting it organized.*

Nearly every CLT that has built a record of longevity and success has found support among (1) individuals and institutions at the grassroots level, (2) governmental officials at the local, regional, or state level, (3) other nonprofit organizations operating within the CLT's service area, and (4) local businesses and banks. It is rare, however, for all of these constituencies to be involved in actually starting a CLT. The inspiration and impetus for a new CLT usually comes from one of them, with the others recruited over time.

Any of these supporters may play the leading role in seeding and nurturing a new community land trust. CLTs in Cincinnati, Los Angeles, Durham, and Washington, DC, for example, were started by grassroots activists. The impetus and early staffing for CLTs in Burlington, Vermont, Portland, Oregon, and Chicago, Illinois came from municipal government. The principal sponsors for CLT programs in Albuquerque, Boston, and Boulder were pre-existing nonprofit community development organizations. In Rochester, Minnesota and in Jackson, Wyoming private employers played a leading role in promoting local CLTs. The start-up of a new CLT may be entrusted to any one of these sponsors – or to any combination thereof. Each has its advantages. Each has its disadvantages. The pros and cons of these four sponsors are weighed below.

GRASSROOTS SPONSORSHIP

In the early years of the CLT movement, nearly every CLT was a product of grassroots activism by neighborhood residents, local clergy, or community organizers. Even today, the impetus for many new CLTs comes from individuals and faith-based organizations at the neighborhood level who see in the CLT a powerful tool for resident empowerment, neighborhood improvement, and community control. A few examples:

- ***New Columbia Community Land Trust***, located in a northwest neighborhood of Washington, DC was created in response to gentrification pressures. Local activists feared not only that low-income tenants might soon be displaced, but that the limited-equity cooperatives being developed to preserve the area's affordable housing might succumb to speculation. The impetus and leadership of the CLT came from local churches and from a nonprofit organization that does tenant organizing and assists tenants in converting their buildings to cooperatives.

- ***Durham Land Trustees*** in Durham, NC was founded in a low-income neighborhood adjoining Duke University by community activists who had grown increasingly concerned about the university's expansion and the continuing deterioration and abandonment of neighborhood housing owned predominantly by absentee landlords.

- The ***Community Land Cooperative of Cincinnati*** was founded by clergy from several churches and by women religious from several orders who worried that their inner-city neighborhood's designation as an historic district might fuel gentrification and the displacement of low-income residents.

- The ***Woodlands Community Land Trust*** in the Appalachian region of East Tennessee emerged out of years of community organizing in a rural area where most of the land is owned by out-of-state coal companies and land companies.

- The ***Figueroa Corridor Community Land Trust*** in Los Angeles was created in 2005 by a coalition of 26 churches, unions, social service providers, and social justice organizations that banded together to fight displacement and promote equitable economic development in the neighborhoods surrounding the University of Southern California.[8]

Advantages of Grassroots Sponsorship

- **ACCEPTANCE & ACCOUNTABILITY**. CLTs that emerge out of grassroots organizing may have an easier time winning acceptance from the community from whom the CLT hopes to draw its members and to whom the CLT hopes to market its units. CLTs that are *of* the grassroots are more likely to be sensitive, responsive and accountable to local residents, especially those of lower income.

- **LEGITMACY**. In the eyes of many funders, public and private, the CLT's connection to a grassroots constituency is the *sine qua non* for financial support. The best way to ensure such legitimacy – and future funding – may be for a CLT to connect with the grassroots from the very beginning.

- **MARKET INSIGHT**. CLTs with grassroots sponsorship, to the extent that they actually remain connected and accountable to their roots, understand their markets. They know intimately the people they are trying to serve and the neighborhoods they are trying to improve.

- **CLEAN SLATE**. A newly incorporated CLT, emerging from a grassroots campaign, carries none of the baggage that may burden other housing and community development organizations operating within the CLT's targeted community.

[8] The formal name of this coalition is the Figueroa Corridor Coalition for Economic Justice.

Disadvantages of Grassroots Sponsorship

- **CAPACITY**. Building a housing development organization from scratch and planning for its first projects can be a slow and difficult undertaking, especially for a grassroots group that may know a great deal about community organizing but next-to-nothing about housing development.

- **CREDIBILITY**. Many grassroots CLTs start up without any guarantee of either government funding or private financing. When a lack of start-up funding is combined with a lack of staff capacity, it can take a start-up CLT several years to build housing and achieve the kinds of successes that demonstrate to community residents and major funders alike that a new CLT is worth supporting.

- **SOLIDARITY vs. SELECTIVITY**. It can be difficult for a grassroots group with a history of successful organizing and successful advocacy on behalf of *everyone* who resides in a particular locale to create a housing development organization that can survive only if it carefully chooses the persons to whom a CLT home is sold (or rented). Although a CLT is broadly inclusive in its membership, it must be highly selective in its leaseholders, serving by necessity only those households who have the wherewithal to meet their financial obligations.

- **COMPETITION**. In their newfound enthusiasm for the CLT and their headlong rush to create one, grassroots groups often ignore nonprofit development organizations that already exist. Established in direct competition with these older nonprofits, vying with them for funds, sites, and constituents, the CLT may earn the enmity of potential partners and the skepticism of outside funders (who may begin grumbling louder than they already do about "too many nonprofit mouths to feed").

GOVERNMENT SPONSORSHIP

Some of the greatest interest in the CLT model in recent years has come from governmental agencies, especially at the municipal level. Although most towns, cities, or counties that embrace the model prefer to leave the initiative and leadership of the CLT to local activists or a local nonprofit, there are a growing number of cases where municipalities play the leading role in introducing the concept of a CLT and in making one happen. A few examples[9]:

- In Syracuse, New York the city's plans to redevelop an inner-city, African-American neighborhood met resistance from local clergy who feared that long-time, lower-income residents might be displaced as the neighborhood improved. The ***Time of Jubilee Land Trust*** was created, with governance based in the neighborhood, but with initial staffing provided by the city

- The ***Champlain Housing Trust*** (formerly the *Burlington Community Land Trust*) was initiated by the administration of an activist mayor, Bernie Sanders, who was looking for a way to protect the city's most vulnerable populations, to preserve the existing stock of affordable housing, and to produce additional affordable housing. The scarcity of public funds available to achieve these goals prompted city support for a model that could ensure the perpetual affordability of any units produced and the perpetual "recycling" of any subsidies invested.

- City officials in Highland Park, Illinois took the lead in creating the ***Highland Park Community Land Trust*** as a recipient of public funds from the city's housing trust fund and as a steward for affordable units being created through the city's inclusionary zoning ordinance.

- The ***Portland Community Land Trust*** was promoted by the city's Bureau of Housing and Community Development out of a concern that Portland's successful efforts to combat sprawl were contributing to the growing *un*affordability of housing in Portland's inner-city neighborhoods.

- The ***Irvine Community Land Trust*** in Irvine, California, the ***Chicago Community Land Trust*** in Chicago, Illinois, and the ***Community Housing Trust of Sarasota County*** in Sarasota, Florida were initiated, funded, and originally staffed by municipal officials. In all three cases, the CLT will be used to monitor and to enforce affordability, occupancy, and eligibility controls for housing located on leased land and, on occasion, for deed-restricted condominiums that are not located on leased land.

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[9] It should be noted that the municipality, in most of these examples, may have played the leading role in starting the CLT, but none of them played a solitary role. Early on, city officials brought nonprofit partners and community activists into the process of organizing the CLT and, in every case, the CLT was set up as a separate, nonprofit corporation, not as a program or agency of the city.

Advantages of Government Sponsorship

- **FINANCIAL COMMITMENTS**. Government sponsorship often comes with a commitment of favored access to the kinds of housing and community development funds (federal and local) that a CLT will need if it is to develop its projects and sustain its operations.

- **STAFF SUPPORT**. Municipal staff, in cases where city government has played the leading role in starting a CLT, have often served as the de facto staff for the new CLT, speeding the process of developing both the organization and its first projects.

- **REGULATORY PERKS**. In many cases of government sponsorship, the CLT is made the beneficiary of municipal ordinances like inclusionary zoning, density bonuses, or other regulatory measures that extract affordable units from private developers. In exchange, the CLT serves as the long-term steward for affordability, eligibility, and occupancy controls required by the municipality.

- **ORGANIZATIONAL NICHE**. Because a municipal sponsor is probably providing support for all of a city's or county's nonprofit housing organizations, it is not going to create a CLT that competes with this existing network. The new CLT will be assigned a niche that complements the efforts of other components of the municipality's affordable housing infrastructure, programs, and plans.

Disadvantages of Government Sponsorship

- **IF GOVERNMENT SAYS IT'S GOOD, IT MUST BE BAD**. Endorsement by an agency of municipal government is going to make the CLT instantly unpopular among everyone with a suspicion of government in general, everyone with a grievance against the sponsoring agency in particular, and everyone with an inability to distinguish between CLT housing and public housing. Especially in neighborhoods with a legacy of urban renewal or municipal neglect, government sponsorship of a CLT may lead a twice-burned population to focus less on what the model gives (e.g., homeownership for low-income families) than on what the model takes away (e.g., restrictions on use and resale).

- **PARTISAN TAINT**. A CLT that is started with the sponsorship of one municipal administration can fall quickly out of favor when another administration comes into office, leaving the CLT high and dry.

- **TOP-DOWN DEVELOPMENT**. Municipal officials may be too far removed from the realities of residential neighborhoods to know how best to tailor the projects and programs of the new CLT to fit the needs and priorities of local communities.

- **MEMBERS NEED NOT APPLY**. Although most municipalities sponsoring the development of a CLT have embraced the model's tripartite board and other elements of the "classic" model, many have resisted including a community membership that elects a majority of the CLT's governing board. They are more concerned about the CLT remaining accountable to the municipality that created it than to a particular community-based constituency. CLTs that lack an open membership, however, often have a harder time winning popular support for this unfamiliar model of housing tenure. They may also have a harder time selling homes on land that is leased from an organization over which leaseholders and their neighbors have little sway.

NONPROFIT SPONSORSHIP

CLTs are being initiated with increasing frequency by pre-existing nonprofit organizations, especially in places with highly developed networks of community development corporations. Nonprofit sponsorship of CLTs has taken four different forms: a separately incorporated CLT is spun off from another nonprofit, within which it was initially incubated and temporarily housed; or a CLT is created by converting an existing nonprofit into a CLT; or a CLT is set up by an existing nonprofit as a separate corporate entity, but it remains affiliated with and controlled by that sponsoring nonprofit; or the CLT is created and maintained as an internal program of an existing nonprofit.

- **SPIN-OFF**. In some cases, a long-established nonprofit housing developer has incorporated and staffed a separate community land trust, which becomes autonomous over time. The CLT gradually builds its own constituency and its own capacity, until it can eventually stand on its own (although, the CLT may continue to purchase services from its sponsor). The ***Clackemas County Community Land Trust***, located to the south of Portland, Oregon, was created in this way by the region's most successful nonprofit developer of tax credit rental housing, Northwest Housing Alternatives. In Cleveland, Ohio the ***Cuyahoga Community Land Trust*** was established as an independent corporation by Ohio City Near West, a nonprofit CDC engaged in residential and commercial development. In Youngstown, Ohio ***CHOICE*** (Community Housing Options Involving Cooperative Efforts) was created through the efforts of Common Wealth, a nonprofit technical assistance organization.

- **CONVERSION**. On a couple of occasions, a community development corporation, upon embracing the CLT model, has amended its bylaws and transformed itself into a "classic" CLT. The ***Sawmill Community Land Trust*** in Albuquerque, New Mexico is a prime example, where a community-based nonprofit housing developer was later restructured as a CLT. Other conversions have occurred as a result of the merger of a CDC and a CLT. In Orange County, North Carolina, for example, a county-wide CLT was originally established as a partnership of the county government, the town governments of Chapel Hill, Carrboro, and Hillsborough, and a local community development corporation, Orange Community

Housing Corporation (OCHC). The CLT was established as a separate corporation, but it was staffed and administered by OCHC. After a few years, OCHC and the CLT decided to merge. OCHC amended its bylaws to take on the organizational structure of a "classic" CLT. The name of the combined corporation is the ***Orange Community Housing and Land Trust.***

- **AFFILIATE**. In some cases, a CLT has been established as a separate corporation by a nonprofit sponsor that retains continuing control over the CLT's governance. ***Dudley Neighbors Inc.***, for example, in Boston, Massachusetts, is a CLT created by the Dudley Street Neighborhood Initiative (DSNI) to be the steward of lands acquired as a result of DSNI's comprehensive program of community organizing, community planning, and community development. DSNI appoints a majority of the seats on the CLT's board of directors.

- **PROGRAM**. In some cases, a successful developer of nonprofit rental housing, wishing to diversify its activities and portfolio by adding a homeownership component, has grafted selected elements of the CLT model onto its operations. The CLT does not exist as a separate corporation with its own board of directors, but as an internal program of a sponsoring nonprofit which may lack both a membership and the tripartite board of the "classic" CLT. ***Thistle Community Housing*** in Boulder, Colorado, for example, is a nonprofit housing developer that has made CLT-style ground leasing a permanent part of its programs. Similarly, in Levenworth, Washington, a CLT homeownership program known as SHARE has been integrated into the other activities of a church-sponsored nonprofit social services organization, ***Upper Valley M.E.N.D.***

Advantages of Nonprofit Sponsorship

- **CAPACITY**. A CLT created under the wing of an existing nonprofit corporation has staff from the very start for both organizational development and housing development.

- **PRODUCTIVITY**. The new CLT may not have to wait too long to launch its first project. If the nonprofit sponsor is already an accomplished developer, the nonprofit's expertise can be used in developing and marketing new units for the CLT.

- **CREDIBILITY**. The CLT can "borrow" whatever credibility and bankability the nonprofit sponsor may have in soliciting funding and financing from public agencies and private lenders.

- **COMPATIBILITY**. A CLT that is sponsored by a nonprofit that has been around for many years – a CLT that may even be housed within that nonprofit – is less likely to threaten whatever network of nonprofit housing development organizations that already exists.

- **DIVERSIFICATION & RENEWAL**. Sponsorship of a CLT, regardless of whether it is retained permanently in-house or eventually spun off as a separate corporation, can strengthen an existing nonprofit by diversifying its portfolio, its constituency, and its funding base. A CLT initiative can introduce new energy and excitement into an older nonprofit in need of renewal.

Disadvantages of Nonprofit Sponsorship

- **POLITICAL BAGGAGE**. Whatever mistakes the nonprofit sponsor may have made in the past, whatever baggage it may carry in the present, and whatever operational weaknesses may haunt its future will burden any product of the nonprofit's labors – including the effort to establish a new CLT.

- **ACCOUNTABILITY TO LEASEHOLDERS**. Allowing the occupants of housing developed by a nonprofit to serve on the nonprofit's board of directors is not only foreign to the experience of many CDCs but one that is strongly resisted. While proponents of the "classic" CLT see leaseholder representation as essential to the stability, responsiveness, and effectiveness of a CLT, organizations that have never included tenants or homeowners on their boards may see only a headache they would prefer to avoid.

- **ACCOUNTABILITY TO COMMUNITY**. Many CDCs that do have community representatives on their boards have never cultivated the kind of open, engaged membership that is contemplated by the CLT; nor have they allowed that membership to elect a majority of the nonprofit's board of directors. Opening up a self-perpetuating board to more involvement and control by the community can be a daunting prospect.

- **DIVIDED LOYALITIES**. Most nonprofit sponsors of a CLT continue to develop non-CLT housing and to operate non-CLT programs. At best, this can dilute the amount of attention and resources that the nonprofit can devote to CLT development. At worst, this can result in direct competition between types and tenures of housing that have long been developed and marketed by the nonprofit sponsor and the new kind of housing being made available through the CLT – i.e., limited-equity, owner-occupied units on leased land.

- **LINGERING CONTROL**. It is often hard for a parent to let go. Nonprofit sponsors, even those with the intention of someday allowing their fledgling CLT to fly away, tend to relinquish control slowly and reluctantly. This can leave the CLT in limbo, neither integrated enough into the structure, staffing and funding of its sponsor nor independent enough to attract funding, constituents, and staff of its own.

EMPLOYER SPONSORSHIP

Private employers have occasionally provided part of the impetus for a new CLT. For example, much of the initiative and early financial support for the ***Jackson Hole Community Land Trust*** in Wyoming came from business leaders who had grown increasingly concerned about the shortage of affordable housing. This was beginning to have an impact on the ability of hotels and stores to retain employees and on the ability of public agencies to attract school teachers, nurses, police officers, and other key workers. Similar concerns – and similar support from the business community –fueled development of the ***Mackinac Island Community Land Trust*** (Michigan), the ***Middle Keys Community Land Trust*** (Florida), and the ***Two Rivers Community Land Trust*** (Washington County, Minnesota). In Port St. Joe, a large part of the impetus and support for starting the ***Gulf County Community Land Trust*** has come from the St. Joe Company, one of the largest landowners and real estate developers in Florida.

Although, in each of these cases, business leaders stepped forward to support the Community Land Trust, it would be an exaggeration to say that they played the principal role in actually initiating and organizing the CLT. To date, such hands-on employer sponsorship has occurred only in the case of ***First Homes***, a CLT in Rochester, Minnesota. The Mayo Clinic, Rochester's largest employer, decided a number of years ago to get involved in helping to address the region's worsening housing problem. Lower-wage employees at Mayo (and elsewhere) were being priced out of Rochester's housing market, partially due to the pressure being placed on that market by Mayo's continuing expansion. Mayo pledged $7 million to the Rochester Area Community Foundation and challenged other private employers to provide a match. The response was enthusiastic, resulting in a $13-million-dollar program to subsidize the construction of hundreds of affordably-priced "starter homes." Introduced to the CLT model soon after making this pledge, senior officials at the Mayo Clinic were attracted to the idea that their contribution could have a larger and lasting effect if subsidies were retained and "recycled" in the housing itself. The CLT's ability to lock these subsidies in place, perpetually controlling the future price at which the assisted homes could be resold, led the Mayo Clinic to insist that a majority of the homes constructed with its money should be developed through a CLT. The Community Foundation, the Mayo Clinic, and various leaders from business, banking, and government proceeded to establish a region-wide CLT, ***First Homes***.

Advantages of Employer Sponsorship

- **EARLY CAPACITY & CREDIBILITY**. Employer-sponsored housing, when pursued though a CLT, can provide a start-up organization with valuable resources and instant credibility, enabling the CLT to build its own capacity and its first project(s) within a relatively short period of time.

- **STARTER HOMES FOR WORKING FAMILIES**. The association of CLT housing with a major employer -–and with persons who work for that employer – helps to remove the stigma that is too often attached to "affordable housing."

- ❖ **LEVERAGING**. The private donations made available to a CLT by local employers can be used to leverage many more dollars of public funding and private financing for the CLT's projects.

Disadvantages of Employer Sponsorship

- ❖ **CAUTIOUS DEMOCRACY**; **LINGERING CONTROL**. Although most employers who donate to a housing development organization like a CLT prefer an arms-length arrangement, avoiding any hint that what they are sponsoring is a "company town," they may be reluctant to relinquish control altogether. The democratic elements of the CLT model can prove especially hard for them to swallow. The CLT in Rochester, MN, for example, has the tripartite board of the "classic" CLT. But the Rochester Area Community Foundation, the intermediary through whom the Mayo Clinic is contributing to the new CLT, gets to appoint six out of nine of the seats on the CLT's board of directors (with the rest reserved for leaseholder representatives). This was done to reassure the CLT's major investor, the Mayo Clinic, that ***First Homes*** would never find itself in the tempest of too much democracy.

- ❖ **A DIFFERENT KIND OF BUSINESS**. Private employers often believe that what they already know about producing, managing, and marketing goods and services in the for-profit sector can easily be applied to the "business" of affordable housing. When this proves to be wrong, their tendency is not to learn a new set of precepts and practices but to lop off the edges of messy models like the CLT, trimming them to fit their own preconceptions of how housing should "properly" be done.

- ❖ **TARGETING HIGHER ON THE INCOME SCALE**. While targeting a CLT's program to "working families" has the advantage of avoiding the stigma frequently associated with affordable housing, there is a risk that families who cannot work, who are looking for work, or who have lost work will not be served. Employer-assisted housing has a tendency to focus higher on the income ladder, avoiding populations that are perched on lower rungs.

Beneficiaries

***Summary**: At an early point in the process of planning a community land trust, a decision must be made as to who the CLT will serve as its highest priority, both in the short run and in the long run. This threshold decision will have a wide-ranging effect on what the CLT will do, where the CLT will work, and how the CLT will fund its projects and operations.*

WHO WILL THE CLT SERVE?

The people who live on a CLT's land are not the only beneficiaries of a CLT's success in stewarding land, stabilizing prices, preserving affordability, preventing displacement, promoting homeownership, and protecting the public's investment in affordable housing and community development. Benefits ripple outward from a CLT's holdings, affecting a widening circle of individuals and institutions in a neighborhood, city, or region. The expansive influence of a CLT's activities is one of the reasons why its leaders look beyond the borders of the CLT's own property for members, directors, and funds.

When it comes to planning a CLT, however, the beneficiaries who matter the most are those to whom the CLT will eventually lease its land and sell its houses. Early on, the sponsors must decide ***who*** their new CLT will serve, even if later events force them to change their minds. This decision cannot be delayed for long, because too many other organizational and operational decisions depend on the CLT's choice of which people and communities are to receive the bulk of the CLT's attention and resources. Thus:

- ❖ Who the CLT plans to serve will affect the ***type and tenure*** of whatever housing the CLT hopes to develop.
- ❖ Who the CLT plans to serve will affect the ***amount of subsidy*** that the CLT will need in order to make each home affordable.
- ❖ Who the CLT plans to serve will affect the ***type of funds*** that the CLT will be able to access, especially funds from governmental sources.
- ❖ Who the CLT plans to serve will affect the ***design of the resale formula*** that will determine who can purchase CLT homes in the future.
- ❖ Who the CLT plans to serve will affect the ***marketing plan*** the CLT will employ in selling (or renting) its housing.
- ❖ Who the CLT plans to serve will affect the ***selection criteria*** the CLT will employ in choosing which households should be given priority when CLT homes become available for sale (or rent).
- ❖ Who the CLT plans to serve will affect the ***organizing strategy*** the CLT will employ in framing its message and building its base.

OPTIONS & ISSUES IN CHOOSING THE CLT'S BENEFICIARIES

The process of deciding who the CLT should serve is usually driven by a compassionate assessment of a community's needs. It must also be guided, however, by a clear-eyed assessment of the community's resources and the CLT's capabilities. Deliberations over who to choose as the CLT's principal beneficiaries tend to revolve around three choices:

- Should the CLT ***go high*** or ***go low*** on the income ladder? There is, of course, a wide range of choices here, with some CLTs targeting households with annual incomes closer to 50% of AMI and some targeting households with an annual income closer to 100% of AMI (or higher).

- Should the CLT serve households at the ***same level*** of income at resale as those who were served when the CLT's homes were initially sold – or should the CLT serve households at a ***lower level*** of income at resale? This is basically a choice between designing a program that maintains affordability over time versus designing a program that attempts to increase affordability across successive generations, reaching lower and lower down the income ladder each time a CLT home resells.

- Should the CLT allow household characteristics ***other than annual income*** to supercede – or, at least, to supplement – whatever range of household incomes the CLT may have chosen as its preferred beneficiaries? Some CLTs give priority to households with urgent needs, allowing a family who has been displaced from a market-rate rental to jump ahead of other households on the CLT's waiting list. A few CLTs have used the age or disability of a prospective homebuyer in determining who will get the first shot at purchasing a CLT home, although these criteria tend to be project-specific instead of being applied more generally to all services and holdings. Many other CLTs have adopted a geographic preference in defining their beneficiaries. People who already live or work in a particular area go to the front of the line when a CLT has homes to fill, leaping ahead of households who are seeking to move into this area for the very first time.

For each of these choices, there are multiple considerations and concerns that might persuade the leaders of a new CLT to lean one way or the other. Described below are a few of the more pressing issues that confront a start-up CLT in deciding who its beneficiaries should be.

Going Low vs. Going High on the Income Ladder

- ❖ The ***higher*** the income of the CLT's targeted beneficiaries, the fewer the funds the CLT may be able to access from governmental and charitable sources. Most of the programs for affordable housing and community development that are offered by federal, state, or municipal agencies are "means tested," allowing them to be used only for the benefit of households earning below a specified level of income, say 50% or 80% or 100% of the area median. Similarly, the federal tax code allows organizations to apply for a 501(c)(3) designation only if they are serving a "charitable" purpose like housing the poor. CLTs that choose to serve households earning high levels of income tend to have a much harder time obtaining 501(c)(3) status from the IRS. Without this exemption, it will be harder for a CLT to attract contributions of land, buildings, and dollars from charitable foundations and private donors.

- The ***lower*** the income of the CLT's targeted beneficiaries, the greater the amount of outside subsidies that the CLT will need if it is to bring housing (and other services) within the financial reach of these low-income beneficiaries.

- The ***higher*** the income of the CLT's targeted beneficiaries, the greater the resistance there may be in lower-income neighborhoods to proposals by the CLT to site new housing there, with long-time residents fearing the CLT will fuel displacement pressures that may already be mounting.

- The ***lower*** the income of the CLT's targeted beneficiaries, the greater the resistance there may be in higher-income neighborhoods to proposals by the CLT to site new housing there, with long-time residents fearing the CLT will lower their property values and bring the "wrong" kind of people into their neighborhood.

- The ***higher*** the income of the CLT's targeted beneficiaries, the less costly may be the administrative burden that the CLT has to bear in "backstopping" security of tenure and encouraging good maintenance in the homes that are sold to these households.

- The ***lower*** the income of the CLT's targeted beneficiaries, the more costly (and more staff intensive) the CLT's administrative burden may be, as it attempts to prevent defaults, forestall foreclosures, and encourage home maintenance among first-time homeowners with limited resources and unstable sources of income.

Maintaining Affordability vs. Increasing Affordability

- By maintaining affordability for homebuyers at the ***same*** level of income across successive resales, the CLT may be able to achieve a better balance between a fair return for the present sellers of CLT homes and fair access for future buyers of these resale-restricted homes. A commitment to increasing the affordability of CLT homes, by contrast, tends to tilt the balance in favor of future homebuyers. Sellers are permitted to earn less on the resale of their homes so that households with a ***lower*** income than those who initially purchased these homes can afford to buy them.

- By ***increasing*** the affordability of CLT homes across successive resales, the CLT may be able to build its portfolio of land and housing at a faster rate. The greatest hurdle a CLT faces in meeting its mission is bringing high-priced property into its resale-restricted domain in the first place and then finding the resources to reduce the property's price so a lower-income household can afford to buy it. If a CLT serves beneficiaries at a slightly higher level of income on the first sale of a CLT home, however, while using a resale formula that makes these homes progressively more affordable with each resale, the CLT may be able to acquire more land and to subsidize more homes with the limited resources it has in hand.

Prioritizing Characteristics Other Than Income

When a CLT considers choosing its beneficiaries on a basis other than income – or, to be more precise, when household income is supplemented by criteria like need, age, disability, or residency – there are advantages and risks that must be weighed.

Some of the ***advantages*** include the following:

- For a CLT with a community development focus, where its mission is to revitalize a particular neighborhood, its mission may be best served by defining the organization's beneficiaries on the basis of geography rather than income.

- The CLT may be able to broaden its appeal – and its base of support – by defining its beneficiaries more broadly than people who earn a specified level of income.

- At the same time, the CLT may be able to narrow the eligibility and occupancy of specific projects, tailoring the housing's design and services to the special needs of particular populations.

The ***risks*** that must be weighed include the following:

- Most funding from governmental sources, especially for housing, is contingent upon the CLT serving lower-income people. If household income does ***not*** trump all other criteria in a CLT's priorities, fewer development funds may be available.

- Fair housing laws at the federal, state, and/or municipal level will place limits on the extent to which a CLT may prioritize its services on any basis other than household income. Restricting eligibility by age or disability are frequent exceptions to this rule, so are priorities for people who live or work within a certain geographic area, as long as protected classes are not harmed by these preferences.

- Making income the highest priority in choosing a CLT's beneficiaries and in filling a CLT's homes may be the best way for a CLT to open up residential enclaves from which the poor (and people of color) have long been excluded. Diluting that priority runs the risk of perpetuating historic patterns of discrimination that the CLT might have otherwise reversed.

Service Area

__Summary__: CLTs are place-based organizations. They develop their projects and draw their members from a community that is geographically defined. This service area may be small or large, urban or rural. It may encompass a single neighborhood, several neighborhoods, an entire city, an entire county, or, in a few cases, a multi-county region. This chapter considers the advantages and disadvantages of service areas of different sizes.

SELECTING A CLT SERVICE AREA: OPTIONS

Until recently, the geographic area served by the typical CLT was a single neighborhood, a single redevelopment district within a larger metropolitan area or, in more rural areas, a single valley or town. Neighborhood-based CLTs, serving a relatively small geographic area, remain popular today, accounting for roughly 25% of all CLTs. Old ones continue to operate and new ones continue to be created in urban, suburban, and rural settings.

An increasing number of CLTs, both old and new, have begun staking out a much larger area, however. A few long-established CLTs that started out with a neighborhood focus have expanded their service areas in recent years. Many newer CLTs have chosen to serve an extensive territory from the very start. Some acquire lands, develop projects, and draw members from an area encompassing an entire city or county. Some define a service area that is regional in scope, operating across the political boundaries of multiple counties, cities, and towns. A couple of CLTs have even organized themselves on a state-wide basis, with the intention of coordinating and supporting the development of local CLTs throughout an entire state.

Regional CLTs, covering either a county-wide or multi-county service area, now make up nearly 30% of all CLTs and are found in both metropolitan and non-metropolitan areas. In the latter, a relatively small population is often scattered among many villages and towns, making it necessary for a CLT to organize and to operate regionally rather than locally. No single town within these areas is large enough to qualify as an entitlement city under federal programs like CDBG or HOME. If a CLT is to receive public funds for its housing and community development work, it must look to county government or to state government and, as a precondition of such support, must serve an entire county, parts of several counties or, in a handful of special cases, an entire island. Examples of regional CLTs serving a ***non-metropolitan service area*** include:

- Central Vermont Community Land Trust (Barre, Vermont)
- Clackamas County Community Land Trust (Milwaukee, Oregon)
- Gulf County Community Land Trust (Port St. Joe, Florida)
- Housing Land Trust of Cape Cod (Centreville, Massachusetts)

- Laconia Area Community Land Trust (Laconia, New Hampshire)
- Middle Keys Community Land Trust (Marathon Florida)
- OPAL Community Land Trust (Orcas Island, Washington)
- Orange Community Housing and Land Trust (Carrboro, North Carolina)
- Story County Community Land Trust (Ames, Iowa)

CLTs that operate in an urban or metropolitan environment, by contrast, can usually look to a single city for much of their support, although they may also derive funding for their operations and their projects from county and state sources. In deciding how large an area they will serve, these CLTs have made three kinds of choices. They have concentrated their efforts at the level of the local neighborhood, they have selected a service area that is city-wide, or they have extended their service area to include the entire metropolitan region. Each of these choices is described more fully below.

Urban CLTs with a Neighborhood Service Area

The most common service area among urban CLTs has long been one that defines a single neighborhood – or several adjoining neighborhoods – as the place-based "community" that a CLT will serve. Examples include:

- Albany Community Land Trust (Albany, New York)
- City of Lakes Community Land Trust (Minneapolis, Minnesota)
- Community Land Cooperative of Cincinnati (Cincinnati, Ohio)
- Durham Community Land Trustees (Durham, North Carolina)
- Dudley Street Neighborhood Initiative/Dudley Neighbors Inc. (Boston, Massachusetts)
- Figueroa Corridor Community Land Trust (Los Angeles, California)
- Homestead Community Land Trust (Seattle, Washington)
- New Columbia Community Land Trust (Washington, DC)
- North Camden Community Land Trust (Camden, New Jersey)
- Sawmill Community Land Trust (Albuquerque, New Mexico)
- Time of Jubilee (Syracuse, New York)

In every case, these are organizations that see in the CLT not only a mechanism for the production of housing and the preservation of affordability, but a vehicle for the comprehensive revitalization of a targeted neighborhood. Housing development and community development go hand-in-hand, with an emphasis on a neighborhood's residents exercising long-term control over both.

Urban CLTs with a City-wide Service Area

Several urban CLTs have selected a service area that corresponds to the boundaries of the city in which they are located. These cities may be large or small, ranging in size from

Chicago, Illinois to Concord, New Hampshire. Examples of CLTs organized on a city-wide basis include:

- ♦ Chicago Community Land Trust (Chicago, Illinois)
- ♦ Concord Area Trust for Community Housing (Concord, New Hampshire)
- ♦ Delray Beach Community Land Trust (Delray Beach, Florida)
- ♦ Highland Park Community Land Trust (Highland Park, Illinois)
- ♦ Irvine Community Land Trust (Irvine, California)
- ♦ Madison Area Community Land Trust (Madison, Wisconsin)
- ♦ Northern Communities Land Trust (Duluth, Minnesota)
- ♦ Portland Community Land Trust (Portland, Oregon)

These are CLTs for whom the production of housing, the preservation of affordability, and the retention of subsidies are predominant. Resident control over any housing developed on the CLT's land and community control over the CLT itself may be key features of these citywide CLTs, but that "community" is not confined to a single neighborhood. Projects are sited throughout the city. Members are drawn from every neighborhood.

Urban CLTs with a Metropolitan Service Area

A few CLTs have staked out an entire metropolitan region as their service area, encompassing not only the region's urban core but the county (or counties) surrounding it. A few examples:

- ♦ Champlain Housing Trust (Burlington Vermont) – formerly the Burlington Community Land Trust
- ♦ Church Community Housing Corporation (Newport, Rhode Island)
- ♦ Community Housing Trust of Sarasota County (Sarasota, Florida)
- ♦ Cuyahoga Community Land Trust (Cleveland, Ohio)
- ♦ First Homes (Rochester, Minnesota)
- ♦ Kulshan Community Land Trust (Bellingham, Washington)
- ♦ Northern California Land Trust (Berkeley, California)
- ♦ South Florida Smart Growth Regional Community Land Trust (Miami, Florida)
- ♦ Thistle Community Housing (Boulder, Colorado)

Although most of the CLT's activity, in each of these cases, is concentrated within a single city or within one or two targeted neighborhoods, housing development opportunities are aggressively pursued region-wide. For example, the ***Champlain Housing Trust*** (formerly the *Burlington Community Land Trust*) has played a leading role in the redevelopment of Burlington, Vermont's federally-designated "Old North End Enterprise Community." At the same time, CHT has developed affordable housing in the surrounding suburbs and two adjacent counties. Siting limited-equity cooperatives and limited-equity single-family homes in communities that have long had a dearth of affordable housing, CHT and these other metropolitan CLTs have enabled low-income households not only to move upward on the housing tenure ladder (vertical mobility) but to move outward from the center city, choosing the place they want to live (horizontal mobility).

Two CLTs with a State-wide Service Area

In Rhode Island and Delaware, CLT organizers have envisioned a service area that spans the entire state. The ***Rhode Island Community Housing Land Trust*** is a cooperative venture of half-a-dozen community land trusts and community development corporations scattered across Rhode Island. These organizations look forward to the day when the Land Trust can provide development, marketing, and administrative support for all of the state's nonprofit developers of resale-restricted, owner-occupied housing. Similarly, the ***Diamond State CLT***, being organized by the Delaware Housing Coalition and the Delaware State Housing Authority, will support the development of local CLTs, while acting as the steward of affordability for publicly-assisted, owner-occupied housing throughout the state. This will include CLT homes on leased land and deed-restricted houses and condominiums that are not located on lased land.

SELECTING A SERVICE AREA: PROS & CONS OF GOING BIG

Citywide or region-wide service areas have a number of advantages over service areas that are neighborhood based. There are also disadvantages, since the strengths and benefits that a CLT derives from serving a smaller, more narrowly defined "community" can be diluted – or lost.

Advantages of a Larger (Non-neighborhood) Service Area

- **MOBILITY.** Affordable housing that is scattered throughout a region provides more choices for low-income people who are seeking better housing, better schools, and/or better jobs.

- **FAIR SHARE**. "Opening the burbs" to affordable housing, thus penetrating residential enclaves that have historically excluded low-income people and people of color, can become an important part of the CLT's purpose and program. This can broaden a CLT's base of political support, deepen its social mission, and strengthen its legal argument for a tax exemption under IRS rules. ("Eliminating prejudice and discrimination" is one of several "charitable" purposes recognized by the IRS in granting a 501(c)(3) designation to nonprofit organizations.)

- **DEVELOPMENT.** A wider service area may present more opportunities to find and to acquire sites on which affordable housing can be developed. Land costs, in particular, can be considerably lower outside of the urban core, making scarce dollars for affordable housing go much further.

- **SELECTIVITY**. A wider service area provides a deeper pool of applicants for CLT housing, allowing the CLT to be more careful and more selective in filling its units.

- **CONSTITUENCY**. A wider service area allows the CLT to cultivate a more diverse membership and to build a broader constituency for affordable housing.

- **COLLABORATION**. There is usually more necessity – and many more opportunities – for collaboration with other nonprofit providers of affordable housing and social services when a CLT encompasses a larger service area.

- **FUNDRAISING**. A wider service area is preferred by many funders, public and private. It can also make grassroots fundraising easier by giving the CLT access to more people as possible contributors.

- **SMART GROWTH**. Working region-wide, a CLT may become a major player in mitigating the negative impacts that anti-sprawl and land conservation measures can sometimes have on the cost of land and the price of housing in residential neighborhoods inside the growth boundary.

Disadvantages of a Larger (Non-neighborhood) Service Area

- **COST OF MANAGEMENT.** Sites and projects that are widely scattered throughout a region can make for difficult and costly property management.

- **LOSS OF ACCOUNTABILITY.** It is harder to keep the CLT accountable when its "community" embraces dozens of projects, hundreds of leaseholders, and thousands of members that are scattered across a wide geographic area. Leaseholder participation, in particular, may become harder to promote and sustain.

- **CLT AS LANDLORD**. A more distant CLT, operating housing that is widely scattered, risks being perceived by leaseholders as an absentee landlord instead of a benign, community-based partner in the provision of affordable housing.

- **COMPETITION**. Staking out a wider territory can place the CLT in competition with other nonprofit providers of affordable housing that are operating in the same service area. Competition for public funds, private donors, prospective homebuyers, potential members, and developable sites can become quite intense, when one nonprofit expands into another's "turf."

- **NOT IN MY BACKYARD.** The more jurisdictions and venues within which a CLT attempts to develop housing for low-income people, the more likely it becomes that the CLT will find its projects and itself under political attack by people who oppose affordable housing in "their backyard." When its own base is thinly spread across a wide region, moreover, it becomes less likely that the CLT will be able to muster local support to rebut such opposition in every place where it wants to develop affordable housing.

- **SPRAWL**. Searching for the least expensive land on which to develop affordable housing can lead a CLT far afield of settled areas. A CLT can find itself politically aligned with private interests that are promoting sprawl rather than curbing it.

- **LESS COMMUNITY ORGANIZING**. A service area that cuts across multiple jurisdictions can make grassroots community organizing more difficult – and less common. A regional membership is more likely to be recruited and mobilized to raise funds for the CLT, not to empower people and communities which the CLT has pledged to serve.

- **LESS COMMUNITY DEVELOPMENT**. Organizations with a wider service area tend to elevate housing development over community development. The revitalization of a particular neighborhood becomes a much lower priority.

Education and Organizing

Summary*: CLTs depend upon a broad base of political, financial, and professional support for the survival of their organizations and for the success of their unusual approach to land and housing. Building that base by systematically educating and recruiting key constituencies is one of the most important tasks facing a new CLT.*

ORGANIZING A CLT: KEY CONSTITUENCIES

CLTs draw their members, boards, financial resources, and political support from a broad spectrum of individuals and institutions. Membership is open to anyone who lives within the CLT's service area. The CLT's board of directors, a majority of whom are elected by the membership, is inclusive and diverse. Funding for the CLT comes from public agencies, private lenders, charitable institutions, and individual donors, many of whom may be outside the CLT's target community. Political support can come from nearly anywhere:

- from grassroots activists attracted to the model's potential for community control and its proven effectiveness in promoting development without displacement;
- from tenant rights organizations and fair housing advocates attracted to the model's potential for helping low-income households to improve their housing situations, either by moving up the housing tenure ladder or by moving out to communities with better services, schools, and jobs than their present neighborhood can provide;
- from public officials and private donors attracted by the model's promise of retaining and recycling scarce subsidies; and
- from anti-sprawl activists of every stripe, attracted by the model's ability to mitigate the inflationary impact that growth management can have on the affordability of inner-city land and housing.

Among the many tasks involved in starting and sustaining a community land trust, none is more important than systematically introducing the model to these various groups and steadily winning their informed support. Any campaign of CLT education and organizing must be pitched as widely as possible in the hope of eventually reaching all of these potential supporters. In the early days of a CLT's start-up, however, ***five*** constituencies deserve special attention: (1) the community of individuals and institutions that call the CLT's service area their home; (2) nonprofit organizations serving the same population as the CLT; (3) governmental agencies to whom the CLT must look for project funding, regulatory approvals, and equitable taxation; (4) private lenders and donors on whom the CLT must depend for mortgage financing and operating support; and (5) housing professionals on whom the CLT must depend for legal advice, accurate appraisals and development expertise.

Community

Who? Tenants, homeowners, churches, and businesses that inhabit the CLT's geographically-defined "community."

Why? It is from these individuals and institutions that the CLT will draw its membership and a majority of its board. It is on their behalf that the CLT acts. It is to them that the CLT is accountable. In some communities, private employers or community-based institutions like churches, synagogues, or mosques or may also be an important source of financial support for a start-up CLT.

Nonprofit Organizations

Who? Community development corporations, neighborhood housing services organizations, housing counseling centers, and other nonprofit organizations engaged in developing affordable housing, managing affordable housing, or providing services to first-time homebuyers or life-long tenants. The highest priority are those nonprofits that share the same service area as the CLT. Even nonprofits that operate outside of this area, however, can sometimes be counted as potential partners – or potential opponents – if they are providing similar services to similar populations.

Why? A new CLT may be regarded as an ally by older housing organizations; conversely, it may be regarded as a competitor. At a minimum, a CLT's sponsors must make an effort to find a less threatening territorial niche or functional role, winning acquiescence from pre-existing nonprofits for the CLT's program. At a maximum, a CLT may negotiate partnerships with these older nonprofits, contracting with them for development services, management services, homebuyer counseling services, or even a programmatic niche within an older nonprofit's own operations.

Governmental Agencies

Who? For urban CLTs, any department (or departments) of city government directly involved in funding, regulating, or taxing affordable housing and/or community development should be a focus of the CLT's education and organizing campaign. Attention should also be paid to a city's public housing authority and to the state's housing finance agency.

Why? City government is not only the custodian of municipal funds and regulatory powers essential to the CLT's operations and projects, it is also the gatekeeper for federal subsidies like CDBG and HOME. The city's assessor will determine how the perpetually encumbered, price-restricted property of the CLT is to be taxed. The PHA may be a source of subsidies, properties, and clients for the CLT. The state's Housing Finance Agency may be source of construction financing for the CLT's projects and a source of mortgage financing for the CLT's homeowners.

Private Lenders and Donors

Who? Banks, Community Development Financial Institutions, and other private lenders; private donors, community foundations, family foundations, and other charitable institutions.

Why? From private lenders, the CLT will derive most of the financing to develop its projects and to mortgage improvements on its land. From private donors, the CLT may secure charitable gifts of money, land, and buildings, essential supports for a CLT's first projects and early operation.

Housing Professionals

Who? Beyond the housing professionals found within the agencies of city and state government, within the offices of nonprofit organizations, and among the ranks of private, for-profit businesses, the CLT will need to pay particular attention to educating three sets of private-sector professionals: attorneys; real estate appraisers; and real estate brokers.

Why? When prospective homebuyers are considering the purchase of a CLT home, most CLTs will require them to meet with an independent attorney prior to purchase. When it comes time for long-time CLT homeowners to re-sell their homes, the CLT's resale formula (depending on which type of formula is adopted) will require an appraisal of the home's appreciated value, one that excludes the value of the underlying land. Both of these professionals will need prior knowledge of the model's features and conditions if they are to perform their assigned roles effectively. Familiarity with the CLT model is also essential for any real estate brokers who are hired by the CLT to assist in the purchase of land and buildings or who are hired by CLT homeowners to assist in the sale of their limited-equity homes down the road. (Note: some CLTs use brokers; some do not. Those who do must make a special effort to ensure that the broker fully understands and fairly communicates the unique characteristics of the resale-restricted property that is being conveyed.)

BUILDING THE BASE FOR A NEW CLT: THREE ORGANIZING STRATEGIES

There are any number of approaches a CLT can take in recruiting key constituencies to the cause of establishing a new CLT. The most pressing issue is not who a CLT needs to reach, since it must eventually cultivate all of these constituencies, but where a CLT should ***start***. Should the CLT start big and gradually narrow its efforts at building a base of support – or should the CLT start small and gradually broaden its base? Should the CLT start with the community or start with individuals and institutions that may fund the CLT? These choices are not mutually exclusive. They sometimes occur on parallel tracks. These choices are not even the only ones a fledgling CLT can make in deciding which strategy to use in educating and recruiting key constituencies. For purposes of discussion, however – and to illustrate the advantages and disadvantages of different organizing strategies – three approaches to building a CLT's base of support are described below.

Community Organizing

In this organizing strategy, sponsors of the proposed CLT conduct a campaign of popular education within the neighborhood, city, or region intended to be the CLT's service area. Dozens (perhaps hundreds) of individuals, churches, voluntary organizations, businesses, and banks are introduced to the CLT.[10] Interested individuals are recruited to serve as an organizing committee for the CLT. That committee proposes a structure for the CLT and later convenes open meetings of the entire community to discuss, refine, and endorse that structure. The bylaws are adopted and a board is selected. The CLT then begins to solicit outside resources, to build its own internal capacity, and to explore opportunities for developing its first project. This is a bottom-up strategy that focuses on building an informed base of support for the CLT before a board is seated or a single unit of housing is built.

Advantages of a Community Organizing Strategy

- **AWARENESS & ACCEPTANCE OF MODEL**. A campaign of popular education removes some of the strangeness and much of the confusion that surrounds an unfamiliar model of housing. A community that understands the model is more likely to embrace the CLT and to support it as a means of realizing the community's own interests and goals.

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[10] Popular education around the CLT model was given a boost in 1998 with ICE's release of a 36-minute video, *Homes & Hands: Community Land Trusts in Action*, produced by Women's Educational Media (www.womedia.org). Many other educational materials were made freely available in 2005 by Burlington Associates in Community Development, when it added a CLT Resource Center to its website (www.burlingtonassociates.com), offering hand-outs and PowerPoint presentations for use in introducing the CLT.

- **RECRUITMENT BEYOND THE USUAL SUSPECTS**. CLTs tend to attract interest and support from unexpected corners of the community. By casting a wide net, a fledgling CLT reaches beyond the small cast of professional volunteers and self-anointed leaders that often dominate locality-based organizations.

- **MARKETING**. At the end of the day, a CLT can only succeed if there are people within its chosen community who are willing to invest their savings and their hopes in buying a CLT home. An education and organizing strategy that is broadly based not only plants the seeds for recruiting people to the CLT's membership and board, but for selling the CLT's homes.

- **FUNDRAISING**. An organization with community roots that are wide and deep will make the CLT more legitimate and more "fundable" in the eyes of private foundations and public agencies outside the CLT's service area that may soon be asked to invest in the projects and operations of this new nonprofit. A community organizing approach to starting the CLT may also uncover churches, businesses, and individuals within the CLT's service area who will are willing to fund the organization, particularly in its early days when organizational development rather than housing development is the highest priority.

Disadvantages of a Community Organizing Strategy

- **TIME-CONSUMING**. Community organizing is a slow and deliberate process. Holding multiple informational meetings can consume an enormous amount of time, as can the deliberations of a broadly inclusive organizing committee. There are many moving parts to the CLT model, requiring many decisions to be made about the CLT's governance, service area, use restrictions, resale formula, the type of development it will do, and the type of roles it will play. The process of discussing and deciding these questions can continue for many months.

- **HIGH EXPECTATIONS**. Broadly educating the community about the CLT can raise high expectations among low-income tenants that they may soon be able to purchase a CLT home. By the time the organization has been established and the housing has been developed, years may have passed. Expectations that are quickly raised but slowly fulfilled can undermine the credibility of a fledgling CLT.

- **LIGHTENING ROD**. When a CLT "goes public," it provides a forum for any individual or organization whose self-interest might be threatened by either the CLT's non-speculative approach to private property or the CLT's possible competition for funds, sites, or constituents. Being denounced in public before it has the backing to withstand such challenges and before it has decided key questions about its structure and program can diminish the CLT in the community's eyes before it has even had a chance to get underway.

Core Group Organizing

In this organizing strategy, CLT advocates quietly approach influential individuals and institutions and ask them to support the creation of a community land trust. The most interested and committed of these recruits are asked to serve on an interim board. This interim board defines the service area, creates the corporation, fleshes out details of the CLT ground lease, and launches the CLT's first project. When the CLT is ready to do its first project – or, perhaps, once its first project is in the ground – the CLT moves to broaden its base of support within the targeted community. Popular education does not begin, in other words, until the details of the local CLT have been worked out and, perhaps, not until an actual project is underway. In time, the interim board is replaced by a duly elected tripartite board, once there are members and leaseholders to put on the board.

Advantages of a Core Group Organizing Strategy

- ❖ **FASTER DEVELOPMENT**. Like-minded individuals can move faster to establish the CLT, without taking time to cultivate and persuade the unconvinced. Furthermore, to the extent that the individuals serving on the interim board have had previous experience establishing nonprofits, running nonprofits, and developing affordable housing, not only can organizational development go more quickly, so can housing development.

- ❖ **FLYING BELOW THE RADAR OF POTENTIAL OPPONENTS**. Core group organizing is a stealth approach to establishing a CLT. By the time the CLT goes public, its leaders have decided key questions of structure and role and, possibly, have launched the CLT's first project. Opponents are forced to challenge an organizational reality rather than a speculative concept.

- ❖ **BUILDING CREDIBILITY**. A new organization that announces its presence in the community by putting housing in the ground has instant credibility – among residents and funders alike. When a CLT is able to move quickly in selling housing to persons who were previously excluded from the homeownership market, moreover, its own leaseholder/homeowners can help to spread the word and to build the base for the new CLT.

- ❖ **BORROWING CAPACITY**. The fledgling CLT borrows the experience and expertise of the individuals who step forward to sponsor it – and to serve on its interim board. One of its sponsoring organizations may even provide staffing and administrative support until the CLT is ready to fly on its own.

Disadvantages of a Core Group Organizing Strategy

- **BURDEN OF ELITISM**. A model that publicly boasts of its accountability to local residents and leaseholders, but privately begins as a small club of insiders, has a credibility problem. This is a burden that can be eventually overcome, but it can take considerable time and effort to do so.

- **BORROWED BAGGAGE**. A CLT created from scratch has an advantage over a community development organization that has been on the scene for many years. It has no political baggage. It has no history of inter-organizational conflict. Starting with a clean slate, the CLT can focus on explaining intricacies and correcting misunderstandings about its unusual model of housing, instead of fighting fights and combating whispers left over from organizational skirmishes of the past. This advantage may be lost, however, when a CLT is started by a core group of high-profile individuals and organizations, any of whom may burden the fledgling CLT with their own political baggage.

- **MARKET RISK**. Building and marketing resale-restricted housing on leased land without first testing the demand for such housing – or without creating the demand for such housing through intensive education and outreach – can be a risky proposition.

Resource Organizing

In this organizing strategy, advocates for a proposed CLT secure a commitment of funds or lands from public or private sources to seed the CLT. With these resources in hand, staff is hired to spread the word, to build the base, and to plan for the use of these committed resources, either through community organizing or through core group organizing.

Advantages of a Resource Organizing Strategy

- **ACCEPTABILITY**. The commitment of money and/or land bestows instant credibility upon a campaign to establish a new CLT. That does not mean that all skepticism about this unusual model vanishes, nor that popular education about the model is now unnecessary. It does mean that, instead of approaching the community hat in hand, the CLT's organizers come with coffers full, inviting the community to share in planning and using these new resources.

Instead of competing from day one with existing nonprofits for scarce funding or scarce sites, the CLT arrives on the scene with its own money or land, ready to go.

- **EARLY STAFFING**. Rather than relying on volunteer efforts to do education and outreach and rather than relying on the temporary chairs of ad hoc committees to convene meetings and track decisions that form the organizational basis for the new CLT, a commitment of funds allows a fledgling CLT to hire one or two people to staff these functions. This may allow, in turn, for the wider recruitment of volunteers, the better use of volunteers, and the better coordination of the separate tasks that go into establishing a new CLT.

- **LEVERAGING**. Money attracts money. A CLT with some resources already in hand is in a stronger position to raise additional funds for its operations and its projects than one that is starting out with nothing more than a compelling idea for how affordable housing and community development might be done more effectively.

Disadvantages of a Resource Organizing Strategy

- **GUILT BY ASSOCIATION**. Endorsement of the CLT model by an unpopular funder, public or private, can be the kiss of death when it comes to community acceptance of this new approach to homeownership. Especially among groups who may already be aggrieved because of a real or perceived lack of investment in their communities by outside funders, the notion of limited equity housing on leased land can sound like a funders' ploy to save themselves some money, while limiting low-income people to a form of homeownership that is only half-a-loaf. When money talks, everybody listens – but many will reject what is said solely on account of who is doing the talking.

- **BUILDING PROJECTS BEFORE BUILDING AN ORGANIZATION**. The temptation, when money or land is committed upfront for building a CLT's first project, is to focus on project development to the detriment of organizational development. This can result in a mad scramble at the very moment that the CLT's first units are coming on line to finalize details of the ground lease, resale formula, marketing plan, selection policy, and orientation procedure for new leaseholders. When done in haste, these tasks are often done wrong.

- **CATACLYSMIC MONEY**. Jane Jacobs long ago warned city planners and community activists about the critical difference between "gradual money" and "cataclysmic money."[11] The former allows a neighborhood – or, by anal-

[11] Jane Jacobs. 1961. *The Death and Life of Great American Cities*. New York: Random House, Inc.

ogy, a community-based organization like a CLT – to grow and change in small increments, becoming more complex, diverse, and stable over time. "Cataclysmic money," by contrast, pours into an area (or into an organization) in concentrated form, a torrent that not only produces drastic change but, by forcing development in a single direction, washes away whatever diversity and resiliency may have previously existed. When too much money or too much land is put into the hands of a fledgling CLT, it may get too big too fast, bypassing the steady learning and studied mastery of both its model and market that come from gradual growth.

Development

Summary: *CLTs use a variety of development strategies to bring land and housing into their price-restricted domain of permanent affordability. Seven such options are described in the present chapter, followed by a consideration of outstanding issues that are raised by each.*

DEVELOPMENT ON CLT LAND: OPTIONS

The development of residential, commercial, and other structural improvements on the CLT's land may involve either the construction of new buildings or the acquisition, rehabilitation, and resale of existing structures. There is nothing about the CLT model that makes the development process for a CLT any different than the process that any other nonprofit or for-profit developer must follow in planning and building a residential or commercial project. Even the financing of a CLT project, during the development phase, introduces nothing new. The options for a new CLT to consider when it comes to development revolve mostly around the ***method*** of development – i.e., how the land gets into the CLT's hands; how the structural improvements get built; and who takes the initiative in making this happen. (Related concerns like long-term financing for CLT projects and the type and tenure of the projects themselves are taken up in later chapters, under FUNDING and SPECIAL TOPICS.) CLTs have used ***seven*** different development methods.

CLT-initiated Development

The CLT – using its own staff and outside contractors hired through an RFP process – initiates and supervises the development of residential or commercial structures on its own land. These improvements are owned by the CLT until the end of the construction period. They are then sold off to individual homeowners, commercial investors, or to a nonprofit or for-profit corporation. Most CLTs eventually become active developers, playing the lead role in planning projects, preparing *pro formas*, packaging financing, securing approvals, hiring architects and builders, and overseeing construction.

Buyer-initiated Acquisition

Prospective homebuyers attend homebuyer education classes and a CLT orientation session to learn about the provisions and restrictions contained in the CLT ground lease. Each homebuyer, if eligible, is pre-qualified for grants and other types of assistance available through the CLT. Each homebuyer, if creditworthy, is pre-qualified through a private lender for a mortgage, establishing the maximum amount that the prospective homebuyer can borrow and, in effect, the maximum sales price that he or she can afford. The homebuyer then searches the market for an existing house that (1) fits his/her personal preferences and needs, (2) meets the mortgage limit established by the lender, and (3) fits the parameters for location and condition set by the CLT. At closing, the CLT purchases the land and house from the seller, sells the house to the homebuyer, and executes a ground lease with the homebuyer, conveying to him or her the long-term use of the land beneath the house.[12]

Developer-initiated Projects

Even when CLTs are actively engaged in doing development themselves, projects may be brought to them by nonprofit or for-profit developers who propose to construct housing or other improvements on land that is either already owned by the CLT or will eventually be owned by the CLT, once the project is completed. It is the developer, not the CLT, that initiates the project and takes most (if not all) of the risk during the project's construction. Development agreements for such projects are negotiated on a case-by-case basis between the developer and the CLT.

Stewardship Projects with Partners Doing All Development

In several communities, CLTs have decided from the start not to be developers themselves, preferring to concentrate instead on the model's stewardship function: assembling land, leasing land, and preserving the affordability of any buildings located thereon. Development is left in the hands of one or more nonprofit partners, often the same nonprofit that sponsored the CLT's creation in the first place. The CLT prioritizes certain types of projects and certain neighborhoods, adopting an internal set of investment criteria. Then, in consultation with its nonprofit partner(s), the CLT acquires specific parcels of land that meet those priorities and makes those parcels available to its partner(s) for development.[13]

Municipally-initiated Projects

In a number of cities, a municipal agency has conveyed city-owned land to a CLT with the understanding that the CLT will oversee development of a particular project which the city wants to see built on the site (usually affordable housing). The

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12 Buyer-initiated programs are being operated by CLTs in Bellingham, WA, Boulder, CO, Burlington, VT, Clackamas County, OR, Duluth, MN, Minneapolis, MN, and Portland, OR, to name a few.

13 Some CLTs *temporarily* restrict their role to stewardship, avoiding a development role only until they have built the capacity to do it well. In Portland, Oregon, for example, the ***Portland Community Land Trust*** made an early decision not to do development itself, preferring to make land available for community development corporations that would partner with the CLT in developing affordable housing. In recent years, the PCLT has accepted a more active role in initiating new projects. A few other CLTs, by contrast, have decided that the landscape of nonprofit housing development organizations is already crowded enough. They *permanently* eschew a development role, choosing to serve as the steward of land and the steward of affordability for housing developed by one or more nonprofit partners. The ***Ashland CLT***; for example, is the recipient and steward of lands and buildings developed by ***ACCESS***, a community action agency in Ashland, Oregon. The ***Chicago CLT*** will be the long-term steward for affordable, owner-occupied housing subsidized by the City of Chicago and produced by nonprofit (or for-profit) developers. The CLT will not become a developer.

CLT oversees development on the site and later ensures the long-term affordability of is built on the site.[14]

Municipally-mandated Units (Inclusionary Housing)

Municipalities have also made use of inclusionary zoning or various regulatory incentives like density bonuses, impact fee waivers, or expedited permitting to force (or bribe) private developers into producing affordably-priced units which are then directed into the care of a CLT. On the city's behalf, the CLT acts as the long-term monitor and enforcer of eligibility, occupancy, and affordability controls imposed on these inclusionary units by the municipality.[15]

PHA-divested Property

Should a PHA divest itself of property that is suitable for homeownership, the land underneath these units could be conveyed to the CLT, whose responsibility it would be to ensure the continuing affordability of these units upon resale and the continuing security of the first-time homeowners who purchase them. Although consideration has been given to such a conveyance of PHA property in several cities, including Portland, OR and Pittsburgh, PA, this has not yet occurred. Only in Wyoming, where land owned by the Teton County Housing Authority was conveyed to the Jackson Hole Community Land Trust for the development of affordable housing, has there been a case of a CLT receiving real estate from a PHA.[16]

[14] Examples of such municipally-initiated projects, where publicly-owned parcels of land were conveyed to a CLT, can be found in Albuquerque, NM, Northfield, MN, Yellow Springs, OH, Portland, OR and Syracuse, NY.

[15] The ***Champlain Housing Trust***, for example, (formerly the Burlington Community Land Trust) has become the steward of dozens of resale-restricted, owner-occupied condominiums, constructed by for-profit developers and sold for a blow-market price to CHT under Burlington, Vermont's inclusionary zoning ordinance. ***Thistle Community Housing*** in Boulder, CO and the ***City of Lakes CLT*** in Minneapolis, MN have played a similar role, acting on their city's behalf to maintain the on-going affordability of inclusionary units.

[16] On the other hand, several CLTs have had close working relationships with their local PHAs in helping tenants of public housing to become first-time homeowners through the CLT. The ***Champlain Housing Trust*** (Burlington, VT), ***Church Community Housing Corporation*** (Newport, RI), the ***Madison Area CLT***, and ***Northern Communities CLT*** (Duluth, MN), in particular, have partnered with their local PHA in taking advantage of recent changes in the Section 8 program, allowing Section 8 to be used in purchasing homes.

Development on CLT Land: Issues

In deciding which method(s) of development a new CLT should pursue, a CLT's organizers, sponsors, and funders must consider a number of issues, addressing questions like the following:

CLT-initiated Development

- ❖ Should the CLT be an active developer of housing and commercial facilities on leased land – or is that a role better left to others, freeing the CLT to concentrate on stewardship?
- ❖ Does the CLT have the in-house capacity to plan, package, and oversee the construction of projects on leased land?
- ❖ Does the CLT have marketing materials and a marketing plan firmly in hand before breaking ground or, at a minimum, before the project is half-way built?
- ❖ Does the CLT have the financial resources and financial resiliency to shoulder the risks and absorb the costs of doing development?

Buyer-initiated Acquisition

- ❖ Will the municipality (or other public funders) provide a pool of per-unit subsidies sufficient to allow the CLT to purchase the land under houses selected by low-income homebuyers?
- ❖ In a high-priced housing market, will additional subsidies be needed by the CLT not only to remove the cost of the land but to reduce the price of the house in order to make it affordable for a low-income homebuyer?
- ❖ Will local lenders be willing to pre-qualify prospective CLT homebuyers before a house has actually been identified?
- ❖ Will a would-be homebuyer be able to hunt for a house in any neighborhood or will some neighborhoods be targeted over others?
- ❖ What parameters of price, size, condition, and/or type of housing will the CLT establish for its buyer-initiated program?
- ❖ What role should the CLT – or other nonprofit housing development organizations – play in inspecting, repairing, rehabilitating, and/or weatherizing houses selected by would-be homebuyers?

Developer-initiated Projects

- ❖ What criteria and what process should the CLT follow in evaluating projects proposed by a nonprofit or for-profit developer?

- ❖ What sort of development agreement will best protect the CLT's interests – and those of its future leaseholders – in partnering with a nonprofit or for-profit developer?

- ❖ What sort of protections can the CLT put in place to ensure that it will not be forced to buy a project that is shoddily built?

Stewardship Projects

- ❖ How will the CLT be capitalized so it can play a land acquisition, land assembly, and land-banking role for its development partner(s)?

- ❖ If the CLT is not doing development itself – and, as a result of this decision, is denying itself significant fees from development – how will the CLT fund and staff its own operations?

- ❖ What sort of criteria and what sort of process should be developed for deciding which parcels of land should be acquired by the CLT?

- ❖ If the CLT "banks" land for future development, how are the costs of holding that land and managing that land to be met?

- ❖ What role should the CLT play in deciding what is actually built by its nonprofit partner(s) on land that is owned by the CLT?

- ❖ Is the CLT's development partner committed wholeheartedly to the CLT model, or will the partner continue producing and marketing types and tenures of housing that compete with the limited-equity, leased-land housing available through the CLT?

- ❖ Should a partnership agreement between the CLT and a nonprofit developer be executed on a project-by-project basis, or should there be a multi-year contract, defining the roles and responsibilities of each over a long period of time?

- ❖ How should the costs and risks of development be shared between the CLT as the steward of land and its nonprofit partner(s) as the developer(s) of projects to be located on the CLT's land?

Municipally-initiated Projects

- ❖ If city-owned land is to be conveyed to the CLT, will it be given for free or, at least, will it be sold to the CLT for a price that is low enough to allow the CLT to develop housing that low-income households can afford to buy?

- ❖ How will the risks and responsibilities of developing the city-owned land be allocated between the city and the CLT?

- ❖ If the CLT, after receiving city-owned land, is later unable or unwilling to perform its stewardship responsibilities will the land revert to the city – or can the city assume the CLT's powers and responsibilities as lessor of the land?

Municipally-mandated Units (Inclusionary Housing)

- ❖ What level of staffing will provide the CLT with enough stability and competency to oversee the buying and selling – at an affordable price – of whatever housing is placed in the CLT's care by the municipality?

- ❖ Is the CLT willing to accept responsibility for guaranteeing the affordability of houses or condominiums that are subsidized or mandated by the city, if this housing is not on land that is owned by and leased from the CLT?

- ❖ If the CLT is the beneficiary of municipally-mandated units that are extracted from for-profit developers, will the municipality provide a fee to the CLT to cover part of the CLT's cost of marketing those units and keeping them affordable, one resale after another?

PHA-divested Property

- ❖ If a Public Housing Authority were to divest itself of any of the much-needed rental housing that it currently owns and operates, what role should a CLT play in either (a) preserving some of these homes as rental, or (b) making homeowners of the current residents?

- ❖ What sort of protections and services should be put in place to help former PHA tenants to maintain and retain their housing units ***after*** they have become CLT homeowners?

- ❖ Should PHA lands be conveyed to a CLT at a market price, at a below-market price, or without any payment at all?

Funding

Summary: *CLTs make use of a variety of funding sources in supporting both their projects and their operations. The most common and lucrative of these sources are described in the present chapter, followed by a consideration of issues peculiar to CLTs with regard to project funding and operational funding.*

SOURCES OF CLT PROJECT FUNDING

The project funding required by a community land trust does not differ in size or kind from that required by any other nonprofit developer of affordable housing. Funds are needed, both as equity and debt, to pay for:

- land acquisition;
- pre-development feasibility;
- architectural design;
- site preparation;
- infrastructure development;
- construction of residential (or commercial) structures;
- rehabilitation of residential (or commercial) structures;
- downpayment assistance for first-time homebuyers; and
- permanent financing for first-time homebuyers or the nonprofit (or for-profit) buyers of residential or commercial structures on leased land.

Such project funding has come from a host of sources, public and private. Those that have proven to be the most beneficial and the most reliable for CLTs around the country are described below.

CDBG & HOME

Any federal funds that are offered to nonprofit 501(c)(3) corporations for the construction of affordable housing or the redevelopment of low-income neighborhoods can be used – and have been used – by CLTs. The two federal programs from which CLTs have received the greatest project support over the past decade have been the Community Development Block Grant Program (CDBG) and HOME. Under the latter program, it should be noted that many CLTs have been designated "Community Housing Development Organizations" (CHDOs) by their Participating Jurisdictions. In 1992, Congress amended the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773) to allow even start-up CLTs to qualify for CHDO status (see Appendix A). Unlike other nonprofit housing developers seeking CHDO designation, a

CLT can be awarded CHDO status without having "a demonstrated capacity for carrying out HOME activities" and without a "history of serving the local community within which the HOME-assisted housing is to be located." A CPD circular, published soon after the 1992 amendments, notified HUD's field offices of this special CHDO exemption for CLTs and the eligibility of CLTs to receive HOME funding for both their projects and their operations.[17] CLTs are also eligible to receive HUD-funded technical assistance for organizational development and project development.

Federal Tax Credits

Although most CLTs concentrate on homeownership, a few also develop and manage rental housing. These CLTs have made extensive use of federal Low Income Housing Tax Credits and Historic Preservation Tax Credits to bring substantial equity into their affordable housing projects. (Since land is not included in the basis for the calculation of tax credits, the typical CLT tax credit deal involves the CLT's ownership of the underlying land, with ownership of the building(s) by a limited partnership.)

Other HUD-sponsored Production Programs

CLTs have developed housing and community facilities on leased land using several other HUD-funded programs, including: Urban Development Action Grant paybacks, HOPWA, Section 108, Enterprise Community and Empowerment Community funds, and Shelter Plus Care.

Federal Home Loan Bank

FHLB's Affordable Housing Program has been a rich source of funding and financing for a number of projects developed by CLTs around the country. The CLT's ability to bring homeownership within the reach of lower-income households, combined with the enforceability of the CLT's long-term protection of affordability, has enabled CLTs to score well in regional competitions for FHLB awards.

Private Financial Institutions

Throughout the United States, private lenders are financing residential and commercial projects on land that is leased from a CLT and writing mortgages for resale-restricted homes that are located on leased land. While some of these mortgages are held in portfolio, the expanding use of a model CLT ground lease prepared by the Institute for Community Economics and a standardized rider approved by Fannie Mae have opened the secondary market to CLT mortgages. CLTs in several communities have also received REO properties from local lenders, either at a below-market price or as an outright donation. Other CLTs have had the benefit of special funds for af-

[17] See also: U.S. Department of Housing and Urban Development. 1999. ***Homeownership Options Under the HOME Program: A Model for Publicly Held Properties and Land Trusts***. Washington, DC: Office of Affordable Housing Programs, Community Planning and Development.

fordable housing set aside by local, regional, or national banks under negotiated CRA agreements.

State Housing Finance Agencies

Permanent financing for CLT homes has been made available, in a growing number of states, through programs underwritten by State Housing Finance Agencies. SHFA financing for CLT-housing has been forthcoming, for example, in Colorado, Massachusetts, Michigan, Minnesota, New Hampshire, North Carolina, Oregon, Vermont, Washington, Wisconsin, and Wyoming. In Delaware, the State Housing Authority has taken the lead, along with the Delaware Housing Coalition, in helping to create a CLT that will act as the steward of affordability for resale-restricted, owner-occupied housing throughout the state.

ICE's Revolving Loan Fund

Since 1979, the Institute for Community Economics (ICE) has financed projects of community land trusts around the country through its own a revolving loan fund. The fund provided low-interest loans for the acquisition of land, the construction of affordable housing, and the development of community facilities on leased land. The future of this fund is presently unknown. ICE has begun negotiations with several national intermediaries – including the National CLT Network – hoping that one of them will eventually assume responsibility for this fund and administer it on behalf of the CLT movement.

Housing Trust Funds

At both the state and municipal level, housing trust funds have provided considerable support for projects developed on CLT land. The ability of the CLT to retain and recycle public subsidies and to perpetuate the affordability of any housing created through such subsidies have made CLTs, in several cities and states, preferred recipients of project funds distributed through Housing Trust Funds.

Tax Increment Financing

Tax Increment Financing for housing on leased land has been used or proposed as a significant part of the funding for projects developed by three CLTs: First Homes (Rochester, MN); Bahama Conch Community Land Trust (Key West, FL); and the Portland Community Land Trust (Portland, OR).

Municipal Real Estate

Public support for a CLT project has sometimes come to a CLT not only in the form of money but in the form of real estate. In several cities, "surplus" lands and buildings owned by the municipal government have been conveyed to a CLT at no cost – or at a below-market price – for the development of affordable housing. (See: "Donations," under Special Topics.)

Municipally Mandated "Donations" by Private Developers

In several cities, including Chapel Hill, North Carolina, Burlington, Vermont, and Boulder, Colorado, CLTs have received "donations" of land and housing from private developers as a result of municipal intervention. Developers have provided such property either in exchange for concessions, approvals, or density bonuses granted by city government or in compliance with a municipal ordinance like inclusionary zoning or housing replacement. In some cases, the CLT has paid nothing. In others, the CLT has paid a price significantly below the property's market value.

Pension Funds

To date, there is only one pension fund that has made an investment in affordable housing through a CLT. The Burlington Employee Retirement System (BERS), the pension fund for municipal employees of Burlington, Vermont, has made a pair of million-dollar investments in projects developed by the Burlington Community Land Trust (now the Champlain Housing Trust).

Private Foundations

The CLT movement has benefited from several program-related investments provided to the Institute for Community Economics by national foundations and from a handful of operating grants provided to individual CLTs. Grants for land acquisition or project development have tended to come from foundations with a more local or regional focus. The largest to date has come from the Rochester Area Foundation in Rochester, MN, which is using a $7 million gift from the Mayo Clinic and $6 million from other donors to acquire land and to build affordable housing through its First Homes initiative. A majority of the units funded through this initiative are being placed under the stewardship of a CLT.

Private Land Donations

Other CLTs have benefited from the donation – or bargain sale – of real estate owned by private individuals, religious orders, and private corporations. (See: "Donations" in the next chapter.)

Development Fees

Although no CLT in the country has been able to fund its next project entirely out of the proceeds from its last project, there are a few CLTs that have regularly (or occasionally) put significant equity into new housing being developed on leased land, where the source of that equity was development fees earned by the CLT on earlier projects.

Lease Fees

To date, only a few CLTs have managed to build a portfolio that is sizeable enough to derive significant income from its own lease fees. This revenue tends to be used as operating support rather than project support. There is one case, however, of a CLT in a more prosperous community turning its lease fees into equity for new projects. In a manner analogous to the transformation of mortgage cash flows into mortgage-backed securities, the Jackson Hole Community Land Trust (Jackson, WY) was able to securitize its future stream of ground lease fees, raising significant equity from private investors for use in its future projects. CLTs that serve a poorer clientele and work in lower-income communities must charge lower lease fees than those charged by the Jackson Hole CLT, making the securitization of this income stream unprofitable and unlikely. Most CLTs rely on lease fees, moreover, for a portion of their operating support. Nevertheless, any CLT that is able to fund its operations from other sources and is able to charge lease fees of $50 - $100 per month, without unduly undermining the affordability of the housing located thereon, may be able to do what JHCLT has done.

SOURCES OF CLT OPERATIONAL FUNDING

Community land trusts across the United States tap many sources of support for their operations. The mix of operational funding varies greatly, state by state, city by city, and CLT by CLT. Described below are the most common sources of operating support that CLTs are currently using.

CDBG & HOME

Many CLTs have received operating support from two federal sources – the Community Development Block Grant program and the HOME program – discretionary funds that are received by a city or a state and are then distributed to grantees at the local level. When CDBG is awarded to a CLT, such funds are typically tied to a performance contract whereby the CLT is committed to produce a particular number of housing units or to provide a particular mix of housing services during the fiscal year.

Under the HOME program, capacity grants are made available for "Community Housing Development Organizations," a designation received by many CLTs.[18]

Private Institutions

CLTs have often received annual operating funds from businesses, banks, foundations, churches, or the United Way. At the high end, a few CLTs are receiving $100,000 - $300,000 from private institutions like these. The average for CLTs around the country is probably closer to $60,000 per year.

Individual Donors

Some CLTs have made fundraising from a broad base of members and donors a major part of their political strategy for winning legitimacy and removing NIMBY opposition to their projects, as well as a major part of their financial strategy for sustaining their own operations.

Grassroots Fundraising

Operating income derived from raffles, house tours, dances, concerts, and other special events provides significant operating funds for a few CLTs, which annually raise anywhere from $10,000 - $50,000 in this way. Most CLTs, especially those in low-income neighborhoods, raise much less from grassroots fundraising.

Development Fees, Rental Income, & Lease Fees

Some CLTs receive almost all of their annual operating support from these three sources of income. Most CLTs receive nearly half. At the high end, a few CLTs receive $150,000 - $250,000 a year in development fees, net management fees for buildings located on CLT land, and lease fees for the use of the CLT's lands. The average amount received by most CLTs is closer to $60,000 per year.

[18] Unlike other nonprofit housing developers seeking CHDO designation, a CLT can be awarded CHDO status without having "a demonstrated capacity for carrying out HOME activities" and without a "history of serving the local community within which the HOME-assisted housing is to be located." This has meant that start-up CLTs have been able to receive CHDO status, HOME-funded capacity grants, and HOME-funded technical assistance.

FUNDING ISSUES FOR NEW (AND OLD) CLTS

Project Funding

- **GRANTS FOR LAND ACQUISITION**. The CLT model works best when land is owned debt-free by the CLT, allowing the CLT to remove the entire cost of the underlying land from the selling price of housing and other improvements. (See Appendix C, "Comparison of the CLT Model vs. Conventional Mortgage Subsidy for Low-income Homebuyers.") Most housing subsidy programs, however, especially municipal programs assisting first-time homeowners, are premised on the recapture of subsidies by the municipal agency administering these funds, not on the retention of public subsidies in the housing itself. Under a subsidy recapture regime, the value of scarce subsidies provided to homebuyers is eroded over time due to monetary inflation and real estate appreciation. Under a subsidy retention regime, subsidies are provided to the developer of permanently affordable housing (i.e. the CLT) and actually grow in value over time, keeping a home affordable for a household of modest means.[19] Overlooking the long-term advantage of subsidy retention over subsidy recapture, many municipalities make two mistakes in investing in CLT projects. Rather than granting their funds for the upfront acquisition of a permanent asset (i.e., the land), they insist on making temporary loans. Rather than directing their funds to a single grantee (i.e., the CLT), they insist on loaning their funds to dozens of individual homeowners. Neither approach takes full advantage of the CLT's potential.[20]

- **GRANTS FOR PROJECT DEVELOPMENT**. Quite often, the subsidy required to achieve the desired level of affordability in a housing project (with or without a CLT) will be greater than the cost of the underlying land. If very low-income people are going to be served, therefore, where construction costs are very high, a CLT – like every other for-profit or nonprofit developer – is going to require grants that are sizable enough not only to remove the cost of the land but to subsidize a portion of the building's cost as well. As obvious as this may seem, it is not uncommon for a public funder to assume that buying the land for a CLT will eliminate the need for additional subsidies to develop the housing.

[19] A longer discussion of subsidy retention versus subsidy recapture can be found in Chapter Four of John Emmeus Davis. 2006. *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-Occupied Housing*. A free copy can be downloaded from the website of the National Housing Institute (www.nhi.org) or from the website of Burlington Associates in Community Development (www.burlingtonassociates.com). Also posted on the Burlington Associates website is a flash animation that graphically compares subsidy retention and subsidy recapture.

[20] There is, in fact, a third mistake that some municipalities have made. They run ***parallel*** programs of subsidy retention and subsidy recapture, where the municipality supports the CLT with one hand and undermines it with the other. For example, a city gives funding to a CLT to write down the selling price of resale-restricted homes, so that low-income households can buy them. At the same time, the city provides a similar level of "downpayment assistance" directly to low-income homebuyers, allowing them to buy housing of the same type in the same neighborhood that is not encumbered with resale restrictions.

❖ **<u>LOANS FOR IMPROVEMENTS ON LEASED LAND</u>**. In all cities and states where CLTs have been successful, local financial institutions have been willing to write mortgages for resale-restricted homes on leased land – sometimes with the backing of FHA or Fannie Mae; sometimes without. In several cities, CLTs have persuaded local lenders to pre-qualify low-income homebuyers for mortgages on CLT homes, enabling would-be homebuyers to participate in the CLT's "buyer-initiated" program. Establishing these relationships with local financial institutions takes education, care, and time.

Operational Funding

❖ **PROVOKING COMPETITION**. In cities with few public funds and many nonprofits, any request for operating support for a new Community Land Trust is likely to be met with skepticism by city officials and with hostility by pre-existing housing and community development organizations, unless the funding pie is made larger for all.

❖ **ESCHEWING DEVELOPMENT**. Some CLTs, in order to avoid competition with pre-existing nonprofit housing developers for scarce resources, have made the reasonable decision not to do development themselves. They contract, instead, with nonprofit partners for these services. But in averting conflict they also surrender any claim to development fees, money that CLTs around the country have relied upon to sustain their operations. Eschewing development, a CLT must find other sources of operating support, including fees collected for counseling homebuyers, marketing units, and managing resales.

❖ **THE CLT AS "SOMETHING NEW."** Start-up CLTs are often beneficiaries of the obsession of many foundations and private donors forever to fund "something new." This is, after all, a model with a rather unique approach to property, governance, stewardship, perpetual affordability, and perpetual responsibility. There is a downside to this obsession, however, for CLTs and for every other housing and community development nonprofit that seeks operational funding from these private sources. While still trying to implement and institutionalize the last "something new," the CLT discovers that its funders have begun looking for the next new thing to support. Some CLTs resist the temptation to further complicate their projects and programs by loading even more innovation onto a model that is already the epitome of "something new." Others do not.

❖ **STAFFING ADEQUATE TO THE TASK**. The need for operational funding is a function of the level of staffing a CLT finds necessary to carry out the roles it has chosen and the goals it has set. Some CLTs manage quite well with a staff of three. Other CLTs need a staff of a dozen (or more) to carry out all of the projects and programs that it has underway. The primary issue for a new (or old) CLT, therefore, when it comes to operational funding, is deciding how <u>much</u> staff and what kind of staff will be needed to do an effective and efficient job of doing the CLT's work.

- **SUSTAINING STEWARDSHIP** At a minimum, the "CLT's work" is the long-term stewardship of any lands and buildings brought into its protected domain of perpetual affordability. A CLT may stop doing development for long stretches of time, awaiting the arrival of new opportunities and funds. But a CLT cannot stop managing its lands, monitoring its leases, or enforcing the durable contractual controls over occupancy and resale that encumber those buildings that are located on its lands. CLTs that have built a large portfolio of land and housing can come close to covering their stewardship costs through revenues that are internally generated: lease fees, service fees, membership fees, and "lease re-issuance fees" that are collected every time a resale-restricted homes changes hands. A newer CLT, holding a smaller portfolio, should plan for the day when it can pay for stewardship out of its own revenues, but until that day the CLT will need to secure sources of operating support outside of itself.

- **FUNDING FOR A THREE-YEAR START-UP**. Experience has shown that it takes about three years for a new CLT to establish itself solidly within a community. The most successful start-ups, in recent years, have been those with at least three years of operational funding firmly in hand before they are launched – or, alternatively, at least three-years of staffing and support from a nonprofit sponsor.

Special Topics

***Summary**: Representatives of the MacArthur Foundation and Chicago's Department of Housing, when commissioning the first edition of this manual, requested specific information on several "special topics," including: variations in the type and tenure of the buildings that may be located on a CLT's land; the role of CLTs in preserving the affordability of condominiums; variations in a CLT's board of directors; donations of real estate to CLTs; and the assessment of local property taxes on a CLT's lands and buildings. This chapter reviews the experience to date of CLTs in the United States in tackling these five issues.*

VARIATIONS IN TYPE & TENURE OF IMPROVEMENTS ON CLT LAND

Experience to Date

Community land trusts, operating locally or regionally, have acquired land, leased land, and ensured affordability for structural improvements of many different tenures and types. Development has sometimes been done through the construction new buildings and has sometimes been done through the rehabilitation of existing buildings. Buildings of different types and tenures have sometimes been developed by a CLT on separate parcels of land. Buildings of different types and tenures have sometimes been mixed within the same project on the same parcel of land.

- **OWNER-OCCUPIED, RESALE-RESTRICTED HOUSES**. CLTs have made land available through long-term leases under single-family detached houses, under residential duplexes with party-wall agreements, and under townhouses. Every lease contains a limited-equity resale restriction to preserve the long-term affordability of this owner-occupied housing, one owner after another. Most CLTs have made single-family homeownership a cornerstone of their housing programs. For some CLTs, this is the only kind of housing they do.

- **OWNER-OCCUPIED, RESALE-RESTRICTED CONDOMINIUMS**. CLTs have made land available through long-term leases under multi-unit residential projects structured as condominiums. CLTs have also made use of deed covenants attached to individual condominiums when the CLT does not own the underlying land (see "Condominiums and the CLT," below). In both cases, the CLT serves as the guarantor of the condominiums' future affordability.[21]

[21] Community land trusts with the most experience to date developing condominiums include the ***City of Lakes CLT*** (Minneapolis, MN), the ***Community Land Trust of Cape Ann*** (Gloucester, MA), the ***Madison Area CLT*** (Madison, WI), the ***Champlain Housing Trust*** *(*formerly the Burlington Community Land Trust) in Burlington, VT, the ***Northern California CLT*** (Berkeley, CA), and ***Thistle Community Housing*** (Boulder, CO).

- **LIMITED EQUITY COOPERATIVES.** CLTs have made land available through long-term leases under multi-unit projects that are owned and operated as limited equity housing cooperatives. Although principal responsibility for repurchasing member shares and protecting the affordability of those shares usually resides with the individual cooperative, the CLT's ground lease ensures that the cooperative housing corporation will continue to operate as a limited-equity (or zero equity) cooperative. The CLT is also there to ensure that co-op shares are marketed in compliance with fair housing standards and that the co-op itself remains financially solvent.[22]

- **RENTER-OCCUPIED HOUSING.** CLTs have made land available through long-term leases under multi-unit projects that are renter-occupied. The ground lease (and the CLT's oversight) helps to ensure that the rental project will not only remain affordable for low-income households, but that it will be well-operated and well-maintained. Rental projects on CLT lands have included SRO housing, special needs housing for persons with disabilities and persons with HIV/AIDS, housing for the elderly, and various types of family housing. Although in some cases ground leasing has not been necessary, because the CLT has retained ownership of the buildings as well as the land, most CLT rental housing has been developed on leased land. The land is owned by the CLT. The renter-occupied building is owned and operated by another nonprofit corporation or by a limited partnership, created to take advantage of federal Low Income Housing Tax Credits.[23]

- **LEASE-TO-PURCHASE HOUSING.** A number of CLTs operate lease-to-purchase programs, where two different forms of tenure – rental and homeownership – appear sequentially in the same building. Single-family houses are constructed or rehabilitated by the CLT and then leased as rental housing to individual households, who are granted a contractual right to purchase their houses from the CLT for an affordable price at a later date. Once these renters have met certain conditions related to homeowner training, credit counseling, and financial solvency, the house (but not the land) is sold to them by the CLT. The rental pe-

[22] CLTs with the most experience doing co-op housing include the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust), ***Cooper Square Community Land Trust*** (New York, NY), ***Dudley Neighbors Inc.*** (Boston, MA), ***Lopez Community Land Trust*** (Lopez Island, WA), ***New Columbia Community Land Trust*** (Washington, DC), ***CATCH*** (Concord, NH), and the ***Northern California Community Land Trust*** (Berkeley, CA).

[23] In Tax Credit projects, the land is not included in the basis, making it easy to have separate owners and investors for the building(s) as opposed to the land. CLTs with the most experience developing and managing rental housing include the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust), ***Church Community Housing Corporation*** (Newport, RI), ***Durham Land Trustees*** (Durham, NC), the ***Laconia Area Community Land Trust*** (Laconia, NH), and the ***Rutland County Community Land Trust*** (Rutland, VT). ***Thistle Community Housing*** (Boulder, CO) operates a CLT homeownership program side-by-side with an extensive portfolio of nonprofit rental housing. The ***Irvine Community Land Trust***, presently under development in Irvine, CA expects to construct and manage as much rental housing as homeowner housing on its land.

riod, while they are preparing to become homeowners, typically lasts from one to five years.[24]

- **MOBILE HOME PARKS.** CLTs have made land available through long-term leases under mobile home parks. The land is owned (and leased) by the CLT. Owner-occupants of the manufactured housing located on this land either lease the entire park from the CLT, as members of a cooperative housing corporation, or they lease the lots or the concrete pads under their homes from the CLT, separately and individually.[25]

- **MIXED-INCOME HOUSING**. CLTs have made land available through long-term leases under mixed-income owner-occupied projects and mixed-income renter-occupied projects. In these projects, while affordability for lower-income persons dictates the pricing structure for a majority of the units, the rest of the project's units may be priced much higher. Alternatively, in an inclusionary housing project, a small number of below-market units may be sprinkled among a project's market-rate majority. The CLT, in this latter case, may be responsible only for maintaining the affordability of the inclusionary units (usually through a covenant attached to the unit deed), but have nothing to do with the market-rate houses or condominiums that make up most of the project's units.[26]

- **NON-RESIDENTIAL BUILDINGS.** CLTs have made land available through long-term leases under buildings with a variety of non-residential uses. In some cases, residential and non-residential uses have been combined within the same building. In other cases, the building has contained no housing at all. To date, non-residential uses on CLT land have included a community health center, a Community Outreach Partnership Center for a local university, several day care centers, and commercial space for neighborhood retail.[27]

- **OPEN SPACE**. Urban CLTs have acquired, managed, and protected land that is undeveloped (or partially developed) for inner-city parks and community gar-

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[24] CLTs with the most experience with lease-purchase programs include the ***Albany Community Land Trust*** (Albany, NY), the ***Community Land Trust of Schenectady*** (Schenectady, NY), ***Durham Community Land Trustees*** (Durham, NC), and the ***Time of Jubilee Community Land Trust*** (Syracuse, NY).

[25] CLTs with the most experience operating mobile home parks on leased land are the ***Central Vermont Community Land Trust*** (Barre, VT), the ***Addison County Community Trust*** (Middlebury, VT), and ***Thistle Community Housing*** in Boulder, CO.

[26] CLTs with the most experience developing housing containing a <u>mix</u> of income groups within the same project, ranging from households earning below 50% of median to households earning over median income, include the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust), the ***Portland Community Land Trust*** (Portland, OR), and the ***Sawmill Community Land Trust*** (Albuquerque, NM).

[27] CLTs with the most experience developing and leasing land for non-residential purposes include the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust) and the ***Durham Land Trustees*** (Durham, NC). The ***Dudley Street Neighborhood Initiative*** (Boston, MA) and the ***Sawmill Community Land Trust*** (Albuquerque, NM) plan to make extensive use of the CLT model in developing and managing non-residential facilities and amenities for their neighborhood redevelopment areas.

dens.[28] CLTs outside of urban areas have acquired and leased lands for agriculture, forestry, recreation, or conservation.[29]

Key Issues for Type & Tenure

- **MISSION & CLIENTELE.** The choice of type and tenure of the buildings to be developed on a CLT's land is guided by what the CLT is trying to accomplish and by whom the CLT is trying to serve. Is the CLT's mission one of housing development or community development? Are single-family detached houses the only type of housing that the CLT will pursue? Is homeownership the only form of tenure? What is the maximum income – and the minimum income – of the population to whom the CLT is committed? Questions of mission and clientele precede the question of which kinds of projects a CLT will pursue.

- **DEVELOPMENT ROLE & STAFFING.** The choice of type and tenure is also guided by the role(s) that a CLT has decided to play in developing projects and assisting residents. These decisions will be guided, in turn, by the CLT's capacity to staff these functions. Some CLTs take on all of the roles and responsibilities of a full-service housing and community development corporation. Other CLTs focus more narrowly on stewardship rather than development, confining themselves to assembling land, leasing land, and preserving the affordability of any buildings located thereon. Between these two extremes of the CLT-as-developer and the CLT-as-steward, a community land trust must decide for itself what it will do, who it will serve, and how many staff it will need.

- **MANAGEMENT ROLE & STAFFING.** Many CLTs have chosen to concentrate exclusively on homeownership, rejecting projects involving either the rental of housing or the rental of commercial space. Where residential or commercial rentals have been part of a CLT's purposes and program, these CLTs must decide whether to sell off the structural improvements or to own and manage these improvements themselves. Under the first scenario, the ground lease allows the CLT to establish and to enforce general guidelines for the affordability, use, and maintenance of any rental buildings located upon its land. Under the second scenario, the CLT exercises direct, day-to-day control over all of these buildings, collecting fees from its tenants to cover its management costs. The CLT must maintain a staff of sufficient size to meet its responsibilities as a property manager. CLTs engaged in rental housing have a basic choice: should the CLT only be the lessor of the land, letting someone else own and manage any rental buildings; or

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[28] Urban CLTs with the most experience using the model for the preservation of open space include the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust), the ***Madison Area Community Land Trust*** (Madison, WI), and the ***Sawmill Community Land Trust***. (Albuquerque, NM).

[29] CLTs with the most experience using the model for conservation, agriculture, or forestry include the ***Athens Community Land Trust*** (Athens, GA), the ***Community Land Trust in the Southern Berkshires*** (Great Barrington, MA), the ***Monadnock Community Land Trust*** (Monadnock, VT), the ***Sapelo Island Cultural and Revitalization Society*** (Sapelo Island, GA), and the ***Woodland Community Land Trust*** (Clairfield, TN).

should the CLT be the owner and manger of both the land and the buildings? Some CLTs have gone one way; some have gone the other.

❖ **THE PURPOSE IN DEVELOPING RENTAL HOUSING.** A CLT must be clear as to WHY it is developing rental housing at all. Done well, nonprofit rental housing is a break-even proposition, where any short-term surpluses are reinvested in the long-term sustainability of the rental property. Nonprofit rental housing is almost never a money-maker. It is realistic for a CLT to decide to develop rental housing in order to expand its social mission, serving populations for whom homeownership is not possible or prudent. It is realistic for a CLT to decide to develop rental housing in order to expand its holdings, taking advantage of the last few federal public programs providing equity for the production of affordable housing. The decision to develop rental housing is not realistic, however, if motivated by the expectation that owning and managing rental housing is going to expand the CLT's revenue base. A CLT that expects rental housing to generate large surpluses that can be used to subsidize the organization's other operations and projects is likely to be woefully disappointed.

❖ **MIXED-INCOME HOUSING.** There are three outstanding issues facing CLTs that are considering the development of mixed-income housing:

(1) How much housing can they do for households that earn more than 80% of area median income without jeopardizing the CLT's 501(c)(3) status?[30]

(2) Will more affluent households be willing to buy (or to rent) higher-priced units in a project where most of the units are priced for households earning below 80% of median?

(3) Should resale restrictions be imposed not only on the lower-priced units but on the higher-priced units as well (the policy of most CLTs, to date)?

❖ **LEASE-TO-PURCHASE.** The four outstanding issues that must be faced by every CLT that attempts to do a lease-to-purchase program are the following:

(1) Is the CLT prepared to assume the responsibilities and liabilities of being a landlord and property manager during the period when the house is being leased from the CLT?

[30] In 1996, the IRS adopted new guidelines for organizations that provide low-income housing. Under the IRS's "safe harbor" rule, nonprofit housing organizations may be granted a 501(c)(3) designation if 75% of the organization's housing serves households earning under 80% of AMI. The other 25% can serve households earning much more. If an organization does not meet the safe harbor guidelines, however, it may still qualify for 501(c)(3) status by conforming to various "facts and circumstances" specified by the IRS. Included among these "facts and circumstances" are several features that are common to nearly all CLTs, including: "rent or mortgage limitations to ensure affordability," "participation in a government housing program designed to provide affordable housing," "a community-based board of directors and community input into the organization's operations," "participation in a homeownership program designed to provide opportunities for families that cannot otherwise to purchase safe and decent housing," and the "existence of affordability covenants or restrictions running with the property."

(2) Is the staffing and programming in place to train and prepare tenants for homeownership?

(3) How should the CLT handle the situation that inevitably arises in every lease-to-purchase program of tenants not being ready or able to purchase their house when the lease period is over?

(4) Has the CLT been able to finance its own acquisition and development of the houses with mortgages that may be assumed by the homebuyer when the house is eventually sold?

- **MOBILE HOMES.** To date, most CLTs that either master lease the land under a mobile home park or individually lease the lots under multiple mobile homes have imposed affordability controls over the resale of the housing. There is much debate, however, as to whether this is necessary or fair, given the low-durability and rapid depreciation in the use value and market value of most manufactured housing.

- **CONDOMINIUMS**. The development of condominiums on leased land – and a CLT's stewardship of condominiums that are ***not*** on leased land – raise issues of their own. These are discussed in the next section (below).

Condominiums and the CLT

Experience to Date

Condominiums are becoming a large part of the housing development programs and the resulting real estate portfolios of a growing number of community land trusts.[31] CLTs have taken three different approaches to preserving the occupancy and affordability of their condominium units: leased land with a master lease; leased land with individual leases; and non-leased land with individual affordability covenants. Examples of each are discussed below.

- **LEASED LAND WITH A MASTER LEASE.** The ***Community Land Trust of Cape Ann*** has developed five different condominium projects, containing a total of 62 units. All four of these condominium projects – an 8-unit project, a 26-unit project, and two 14-unit projects – are located on leased land. For each project, the Cape Ann CLT has executed a master lease, conveying the underlying land to the condo association upon condition that the individual units remain affordable

[31] CLTs with the most experience to date in developing condominiums are the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust), the ***City of Lakes Community Land Trust*** (Minneapolis, MN), the ***Community Land Trust of Cape Ann*** (Gloucester, MA); ***Thistle Community Housing*** (Boulder, CO); the ***Northern California Community Land Trust*** (Berkeley, CA); and the ***Madison Area Community Land Trust*** (Madison, WI).

over time. A condominium owner's legal obligation to resell his/her unit at an affordable price is imposed through the documents that create the condominium regime, define the owner's relationship to the association, and secure the owner's shared interest in the project's common property (including the land). A similar approach was used by the ***Madison Area Community Land Trust*** in developing its first condo project, 14 condominiums on leased land. A master lease is used to convey the land to the condo association. Individual owners of the condominium units subscribe to the terms of this master lease, via a Letter of Acknowledgement that is signed at the time of purchase and attached to the master ground lease. For its most recent project, Troy Gardens, the Madison Area CLT has used a master lease for the land and attached affordability covenants to each condominium.

- **LEASED LAND WITH INDIVIDUAL LEASES FOR EACH CONDO.** Condominiums have also been developed on leased land using individual ground leases rather than a single master lease. For example, ***Thistle Community Housing*** has developed over a hundred condominiums, all on leased land. Instead of a master lease between Thistle and the condo association, Thistle executes a separate ground lease for each condominium. This ground lease is identical in form and content to the lease that the owner-occupant of a single-family, detached house would normally sign with a CLT, except for the description of the leased premises. For a 15-unit condominium project, for example, this description would grant each condo owner an individual, undivided 1/15 leasehold interest in the land underlying the project.

- **NON-LEASED LAND WITH AFFORDABILITY COVENANTS ON EACH CONDO.** CLTs have also protected the affordability of condominiums where the CLT does not own the underlying land. For example, the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust) has brought 130 condominiums into its protected domain of perpetual affordability. None of these condominiums is located on leased land. The CHT attaches a state-sanctioned affordability covenant to the unit deed for each condominium, allowing the CHT to repurchase the unit at a formula-driven price, should the owner ever decide to sell. Many of these units have come into CHT's domain through the City of Burlington's inclusionary zoning ordinance, which gives the CHT (as the city's designee) the first right to acquire inclusionary units at a below-market price. The same approach was used by the ***Community Land Trust of Cape Ann*** (Gloucester, MA) for its first two condo projects, before it began developing condominiums on leased land. In these earlier projects, an affordability covenant, authorized by Massachusetts law, was attached to the unit deed for each condominium. Housing subsidy covenants are also being used by the ***City of Lakes Community Land Trust*** (Minneapolis, MN) for the condominiums that have come into its portfolio through inclusionary zoning.

Key Issues for CLTs Developing Condominiums

- **CONDO DEVELOPMENT ON LEASED LAND**. In some states, the development of condominiums on leased land is permitted by the state's condominium enabling statute only within very narrow limits. In New York State, condominiums on leased land are prohibited altogether. (This used to be true in Massachusetts as well, but the state's condominium statute was eventually amended at the insistence of CLT advocates to allow it.) Before developing limited equity condominiums on land that is leased from a CLT, a state's condominium laws must be examined to see whether a leased-land condominium is even possible.

- **ENFORCEABILITY OF RESTRICTIVE COVENANTS**. In Vermont and Massachusetts, two states where CLTs have developed resale-restricted condominiums that are <u>not</u> on leased land, there exists a state enabling statute that explicitly authorizes the use of "affordability covenants" in housing that is subsidized for lower-income households. In these states, the durability and enforceability of such covenants is not in question. In states without such a statute on the books, however, the long-term enforceability of covenants appended to the unit deeds of individual condominiums, granting a CLT (or any other entity) the right to repurchase the condominium at a restricted price, may be an issue.

- **VESTED INTEREST OF THE CLT**. Even where the enforceability of the CLT's preemptive right to repurchase condo units at a below-market price is not in question, the CLT must be willing and able to exercise this right. This is true, of course, for the resale of every type and tenure of housing that is located on a CLT's land. Unless the CLT is actively engaged in supervising the transfer of resale-restricted units, the likelihood of these units ***remaining*** affordable over time is not great. This issue becomes particularly pressing and problematic in condominium projects where the CLT does not own the land. The issue is this: will a CLT that does not own the land beneath condominiums be just as vested in protecting the affordability of those units as it would be for housing that ***is*** located on its land?

- **RESTRICTIONS ON CONDO CONVERSION**. Several states – and many more cities – closely regulate the conversion of residential rental units slated to become condominiums. Most of these condo conversion laws give current tenants the right to remain in residency during a notice period that may range from six months in some jurisdictions to three years in others. Tenants may also be given the first right to purchase their units once they are converted to condos.[32] CLTs are not exempt from these restrictions on conversion, despite the CLT's

[32] In Burlington, Vermont, under the city's condominium conversion ordinance, the building as a whole may be purchased by the city or by its nonprofit designee on behalf of the tenants, when the owner of a rental property gives notice of his/her intent to convert the building to condominiums.

dual commitment to preventing displacement and preserving the affordability of any units that come into its price-protected domain.

- **MARKETING LIMITED EQUITY CONDOMINIUMS**. The "bundle of rights" that is held by the owner of a condominium is already missing a number of the "sticks" that are typically found in the "bundle" that is held by the owner of a single-family detached house. Even more "sticks" are missing in the case of a limited equity condominium, regardless of whether the condominium is located on leased land. The owner must occupy the unit as his or her principal residence and may only sublet the unit with the CLT's approval. The owner must resell the unit to the CLT – or to an income-eligible buyer approved by the CLT – for a price that is likely to be far below the unit's market value. Selling such resale-restricted condominiums in some markets can be a challenge.

- **CONDO DEVELOPMENT AND LEGAL FEES**. More than one CLT has complained that developing condominiums on leased land is little more than a "full employment program" for local attorneys. The multiple parties involved in the project, the multiple conveyances required to transfer control over the land, common areas, and individual units, and the multiple legal documents required to establish the condominium regime and to define the rights and responsibilities of the CLT, the condominium association, and the owners of the condominiums can generate hundreds of hours of legal work – and many thousands of dollars in legal fees.

- **CONDO ASSOCIATION FEES**. In mixed-income condominium projects, especially in those where "affordable" units are in the minority, there may be continuing pressure from the more affluent homeowners to add amenities and services, pushing up the project's association fees beyond what the project's lower-income homeowners can afford. Protections must be added (and monitored) by the CLT to ensure that association fees remain affordable.

- **CONDO ASSOCIATION AND THE CLT**. In a condominium project in which the CLT has an interest, either as the owner of the underlying land or as the steward of affordability covenants attached to individual condo units, there will be a division of labor between the condominium association and the CLT with regard to managing the common property, setting association fees, managing resales, and regulating occupancy, improvements, subletting, and other uses of the condominiums. Which organization is responsible for what – and when the prerogatives of one organization may trump the prerogatives of another – must be sorted out at an early stage in the process of developing a condo project, an allocation of responsibility and authority that must be institutionalized in the documents creating the condominium regime.

VARIATIONS IN GOVERNANCE STRUCTURE

Experience to Date

The tripartite board of the "classic" CLT includes persons who live in housing on the CLT's land (leaseholder representatives), residents of the CLT's community who do not lease land from the CLT ("general representatives"), and individuals representing the broader public interest ("public representatives"). Each of these voting blocks receives an equal number of seats. A majority of the board is directly elected by the CLT's members, a membership made up of two voting blocks. Every person living on the CLT's land or living in a home encumbered by the CLT's affordability covenant is automatically made a leaseholder member of the CLT. Any adult resident of the surrounding community may become a general member by subscribing to the CLT's purposes and by paying a small membership fee. Leaseholder members nominate and elect a third of the board. General members nominate and elect a third of the board. The remaining seats, representing the public interest, are nominated by the CLT's board and ratified by the entire membership. Variations in this governance structure revolve around three questions: (1) what kind of voting membership should the CLT have? (2) what interests should be represented on the CLT's board? (3) what selection process should be used to fill the seats on the CLT's board?

Membership Options

Most CLTs in the United States are membership organizations, structured in accordance with the "classic" model. Any adult who resides within the CLT's service area may become a member of the CLT, simply by applying for membership, declaring his or her support for the CLT, and paying a nominal membership fee. Any residents of CLT housing automatically become members as soon as they move in. In most cases, these members are "real" persons, not organizations. There have been variations in CLT membership, however:

- Several CLTs have memberships that include organizations as well as individuals. For example, the ***New Columbia Community Land Trust*** (Washington, DC) allows churches and nonprofit corporations to become voting members. The ***Boston Citywide Land Trust*** restricted its membership in the beginning solely to community development corporations operating within the BCLT's service area (which encompassed all of Boston).

- Several organizations with CLT programs do not have members. For example, ***Dudley Neighbors Inc.***, the CLT sponsored by the Dudley Street Neighborhood Initiative, does not have a membership of its own, although its sponsoring organization (Dudley Street Neighborhood Initiative) does. ***Thistle Community Housing*** and ***Upper Valley M.E.N.D.***, two organizations with internal CLT homeownership programs, have no memberships at all, either for their CLT program or for themselves.

Composition Options

Most CLTs have adopted the three-part board found in the "classic" model. There has been considerable tinkering, however, with the definition and composition of each part. Some examples:

- Within the block of seats set aside for leaseholder representatives, some CLTs reserve seats for special categories of leaseholders. For example, the ***Champlain Housing Trust*** (formerly the Burlington CLT) reserves a third of the seats on its board for leaseholder representatives, but sub-divides that block among seats that are reserved for tenants, seats that are reserved for members of housing cooperatives located on the BCLT's land, and seats that are reserved for owners of single-family homes.

- Within the block of seats set aside for "public representatives," it is common for CLTs to reserve one or more seats for government officials from a particular city or agency. The ***Orange Community Housing and Land Trust*** (Carrboro, North Carolina), for example, reserves four seats on its 15-member board for town and county officials.

- Among CLTs that are affiliates of NeighborWorks® America – including the ***Champlain Housing Trust*** (Burlington, VT), the ***Central Vermont CLT*** (Barre, VT), and ***Thistle Community Housing*** (Boulder, CO), among others -- at least one seat is always reserved for someone from the "financial community" and at least one seat is set aside for someone from "government."

- Seats are reserved on the board of the ***Newtown Community Development Corporation and Community Land Trust*** (formerly the Community Land Trust of Tempe) for representatives of the City of Tempe, Arizona State University, and the local community foundation.

- Half of the board of the ***New Columbia Community Land Trust*** (Washington, DC) is made up of individuals, drawn from New Columbia's leaseholder and community members. Half is made up of institutions – i.e., representatives of other nonprofit corporations and churches.

Selection Options

The most common method used by CLTs in selecting who will occupy the seats on the board of directors is for the members who are leaseholders to nominate and elect their own representatives to the CLT's board and for non-leaseholder who are general members to nominate and elect their representatives to the board. The directors who are elected then nominate and elect persons to fill the final third of the board's seats. Other methods are used, however, including the following:

- **MEMBER ELECTION OF ENTIRE BOARD**. Leaseholders nominate and elect their representatives to the CLT's board. General members nominate their and elect representatives to the board. Sitting members of the board of directors nominate persons for the "public" seats, but these nominees are then submitted to the entire membership for election (or rejection).

- **RESERVATIONS**. Individual seats are reserved for designated institutions, associations, or industries, but the particular person who fills each seat is nominated and appointed by the CLT's board (usually in consultation with that outside institution, association, etc.).

- **OUTSIDE APPOINTMENTS.** An outside party is given the power to appoint individuals to occupy a seat or a block of seats on the CLT's board. This has most commonly occurred for the CLT's "public representatives." The ***Orange Community Housing and Land Trust*** (North Carolina), for example, has a 15-member board. Four of the five "public" seats are appointed by the Orange County Board of Commissioners (one seat), the Chapel Hill Town Council (one seat), the Carrboro Board of Aldermen (one seat), and the Hillsborough Town Board (one seat). The board of the Dudley Street Neighborhood Initiative (Boston, Massachusetts) has the right to appoint a majority of the board for its affiliated CLT, ***Dudley Neighbors Inc***. The Rochester Area Community Foundation appoints two-thirds of the board of the separately incorporated CLT that is known as ***First Homes*** (Rochester, Minnesota). The Community Development Network, a county-wide collaborative of CDCs, is given the power to appoint two of members to the board of the ***Portland Community Land Trust*** (Portland, OR).

- **INSIDE APPOINTMENTS**. The CLT's board selects individuals to fill seats or blocks of seats on the board. These selections may or may not be subject to ratification by the CLT's membership.

- **TRANSITION BOARDS**. A number of CLT's, including several with boards that are presently composed and selected along lines of the "classic" CLT, start out with one governance structure and transition to another over a period of several years. Two-thirds of the board of the ***Clackamas County Community Land Trust*** (Milwaukee, OR), for example, was appointed by its sponsoring nonprofit, Northwest Housing Alternatives (NHA), when the CLT was first founded. Over a five-year period, NHA gradually relinquished control over the CLT. It now appoints only two representatives to the CLT's board. The transition plan that NHA and CCCLT adopted and implemented was as follows:

	Public Reps		Community Reps		Leaseholder Reps	
	NHA Appointed	*Board Appointed*	*NHA Appointed*	*Membership Elected*	*NHA Appointed*	*Membership Elected*
Year 1	4	0	1	3	1	0
Year 2	2	1	1	3	1	1
Year 3	2	1	0	3	1	2
Year 4	2	1	0	3	0	3
Thereafter	2	1	0	3	0	3

Key Issues for CLT Governance

- ❖ What is the best way to ensure local accountability – and community support – for a CLT?
- ❖ Will homeowners/leaseholders who are scattered across a large geographic area feel connected enough with one another to elect a slate of candidates who adequately represent their interests on the CLT's board?
- ❖ Which public officials (if any) should be invited onto the CLT's board?
- ❖ Which private funders (if any) should be invited onto the CLT's board?
- ❖ At what point in the multi-year process of establishing the CLT should a non-profit sponsor or a government sponsor relinquish its preeminent role in governing and/or staffing the CLT?
- ❖ Will reserving seats for local governments create a conflict of interest, if the municipality is not only a funder and regulator of the CLT, but a member of its governing board as well?
- ❖ Should seats be reserved for a particular organization (e.g., the "XYX Community Development Corporation") or for general organizational categories (e.g., "a representative of another nonprofit organization developing housing or providing services for low-income people")? Some CLTs do one; other CLTs do the other.

DONATIONS OF LAND AND BUILDINGS

Experience to Date

CLTs around the country, benefiting from their 501(c)(3) status, have been frequent recipients of donations of vacant land, donations of buildings (with or without the underlying land), bargain sales, and gifts of equity from real estate sales. Some selected examples of CLT experience to date:

Donations of Publicly-owned Real Estate

- Twenty-seven acres of vacant, city-owned land were conveyed to the ***Sawmill Community Land Trust*** by the City of Albuquerque. Ten acres are being developed by Sawmill for affordable housing, with the rest set aside for open space, orchards, and commercial development. Sawmill is being required to pay the city only for lands that will be used for commercial purposes.

- The ***Burlington Community Land Trust*** (now renamed the Champlain Housing Trust) was given a former firehouse by the City of Burlington, a building later converted by the BCLT into an emergency shelter for homeless families.

- The Teton County Housing Authority donated a parcel of land to the ***Jackson Hole Community Land Trust*** on which the CLT's first limited-equity single-family homes were built.

- The ***Portland Community Land Trust*** in Oregon has built three houses on lots received as "surplus land" from the Portland Development Commission. Another 16 houses have been constructed by the PCLT on tax-foreclosed lots received from Multnomah County.

Donations of Privately-owned Real Estate

- The ***Rondo Community Land Trust*** in St. Paul, Minnesota was given five large, single-family houses by Macalister College and one single-family house by Hamlin University, contingent upon Rondo's willingness to move these houses to another site. The donation was made, the houses were moved, and, after rehabilitation, the houses were sold (and the underlying land was leased) to six low-income families. Rondo then worked with a local church to move four donated houses that were in the path of the church's expansion. The ***Rocky Mountain Community Land Trust*** in Colorado Springs negotiated a similar deal with Colorado College, receiving and moving several single-family homes.

- The Catholic Diocese in Duluth, Minnesota donated land to the ***Northern Communities Community Land Trust*** for the development of its first single-family homes.

- The ***Woodland Community Land Trust*** (Clairfield, TN), based in the Appalachian area of east Tennessee, has received two donations of land and buildings. In 1978, WCLT was given 17 acres of vacant land. In 1999, it was given 12 acres of land on which were located three coal camp houses and an abandoned school.

- Bank-foreclosed properties have been donated to the ***Albany Community Land Trust*** (Albany, NY), ***CATCH*** (Concord, NH), and the ***Twin Pines Housing Trust*** (White River Junction, VT).

- A vacant industrial building in the middle of a dense, residential neighborhood was donated to the ***Burlington Community Land Trust*** (now renamed the Champlain Housing Trust) for redevelopment as the Rose Street Cooperative, a cooperatively owned living/working space for local artists.

Bargain Sales

Bargain sales have been used by the ***Cheshire Housing Trust*** (Keene, NH), the ***Clackamas County Community Land Trust*** (Milwaukee, OR), the ***Homestead Community Land Trust*** (Seattle, WA), the ***Jackson Hole Community Land Trust*** (Jackson, WY), the **OPAL** ***Community Land Trust*** (Orcas Island, WA), and the ***Rondo Community Land Trust*** (St. Paul, MN), among others, to acquire single-family houses, multi-unit apartment buildings, and commercial buildings. In each of these cases, the conveyance happened essentially like this. The private owner commissioned and paid for a market appraisal of the property s/he wished to sell to the CLT. (In the case of Cheshire and Rondo, the property in question was owned by a bank.) The actual price that was paid by the CLT for the property's purchase was substantially lower than the property's appraised value. The difference between the sales price and the appraised value was claimed by the former owner as a charitable contribution to a 501(c)(3) organization – i.e., the CLT.

Equity Gifts

Several CLTs, including ***Thistle Community Housing*** (Boulder Colorado) and the ***Champlain Housing Trust*** (formerly the Burlington Community Land Trust in Vermont), have received a percentage of the proceeds from the sale of privately-owned real estate. Such "equity gifts" have either occurred on the spur of the moment, when an owner contributed a portion of his or her appreciation on the sale of a parcel of real estate to a CLT, or they have happened as the result of a long-ago pledge. The owner pledged a specified percentage of any appreciation in his/her house to the local CLT. When the house was sold, often many years down the road, the CLT received that percentage as a gift.

Key Issues for CLT Donations

- **HIDDEN COSTS**. "Never look a gift horse in the mouth" is lousy advice when it comes to proposed donations of real estate. This is especially true for gifts of older buildings. The cost of rehabilitating a building, the cost of moving a building, the cost of bringing a building up to code after it is moved, or the cost of operating a building with an outdated heating system and no insulation may be so high as to render the house unaffordable for a low-income family, even if the CLT's acquisition cost is zero. Even worse, the CLT may get stuck with a bill for thousands of dollars because a building contaminated with lead, asbestos, or other toxic materials must be demolished. Some proffered gifts of real estate are a "white elephants" that are better refused.

- **LAND DIVESTMENT**. The bylaws of most CLT's intentionally make it very difficult for the organization to sell land. It is contrary to the philosophy and purpose of most CLT's to return land to the speculative market. Nevertheless, a CLT that receives a donation of real estate that is outside of its service area or that cannot be used for affordable housing or for any other purpose consistent with the organization's charitable purposes will probably want to sell that property, using the proceeds to further its corporate purposes. Although it can be a time-consuming and, on occasion, a contentious process for a CLT to consummate such a sale, since both its board and its membership must consent to the divestment of land, it ***has*** been done.[33]

- **TAX TREATMENT**. Gifts of real estate and bargain sales can generate significant tax deductions for private donors when conveyed directly to a 501(c)(3) corporation like a CLT. The size of these deductions will be a consequence of the donor's tax bracket, the market value of the donor's gift, and current federal and state tax codes. Contributions to CLTs from wealthy individuals are especially sensitive to changes in the federal code.

[33] It is worth noting that some CLT's have amended their bylaws to allow for the quick divestment of donated land solely with the approval of the CLT's board under circumstances where: (1) the donation cannot be used for affordable housing; (2) no leaseholders will be displaced because of the sale; and (3) the proceeds will be used for the acquisition of other lands or the development of other housing for low-income households.

PROPERTY TAXES

Experience to Date

Local taxation of land and buildings within the price-restricted domain of the community land trust is a crazy-quilt pattern of rational innovation, political calculation, and irrational expediency. The variability from one state to another, even from one jurisdiction to another within the same state, is extraordinary. These are the key questions for which local assessors have found any number of different and conflicting answers:

- ❖ What is the value of the land that is owned by the CLT when it is entered on the tax rolls, considering that this land is encumbered with a 99-year-lease, this land will generate only modest fees for the owner during the term of the lease, and this land will be immediately leased again to another low-income household whenever it reverts to the CLT?

- ❖ What is the value of the housing (or other buildings) located upon the CLT's land when entered on the tax rolls, considering that these structures are encumbered with a perpetual restriction on both the equity the owners may earn when the structures are resold and the income the owners may earn if the structures are sublet (assuming the CLT even allows subletting)?

- ❖ How are these values adjusted over time – i.e., what is the rate of increase in the assessed value – considering that the land is never resold and the buildings are resold at a formula-driven price that is almost sure to be far below their market value?

It should be understood that all property taxes are paid by individual owners of the structural improvements. Regardless of the fact that the CLT holds title to the land, it is the homeowner who has exclusive use of that land for 99 years (or more). Any tax bills received by the CLT for lands conveyed through what is, in effect, a perpetual lease are passed along to its lessees for payment. The affordability of housing located on a CLT's land is impacted quite directly, therefore – and, in some jurisdictions, eroded quite significantly – by the property taxes that a CLT's homeowner/leaseholders must pay.

Key Issues for Property Taxes

- ❖ **AFFORDABILITY**. Although the homeowner/leaseholders of CLT property are expected to pay and are willing to pay their fair share of local property taxes, they are too often required to pay much more. Many local assessors, in assigning values and levying taxes, take little or no account of the fact that CLT homes are heavily encumbered with durable restrictions on subletting, resale, and use – restrictions that significantly constrain a property's profitability. The owners of these homes are often forced to pay taxes, therefore, not only on value that is theirs, but on value they can never claim for themselves, rendering their homes unaffordable over time.

- **POLITICAL NECESSITY**. Affordable housing, in many jurisdictions, is controversial enough without adding a volatile issue like tax exemption or tax stabilization to the mix. Most CLTs, even in places where tax exemptions are routinely offered to nonprofit organizations, have chosen not to seek the removal of CLT land and homes from local tax rolls. Nor have many been willing to push too hard or too far on the issue of tax stabilization for property that is perpetually encumbered with price restrictions on both subletting and resale. These choices, often made in the middle of heated NIMBY-motivated battles with entrenched opponents of affordable housing and vocal skeptics of the CLT, may result in bad policy but may also be good politics, at least in the short run.

- **VALUE OF LAND**. Ideally – and logically – the assessed value of the CLT's land should never be more than the "leased fee value," i.e., the economic value that is retained by the landowner. This amount is essentially the Net Present Value of the income stream which the CLT can collect from a parcel of land in monthly fees over the term of the lease, plus any value that the CLT can realize when the land reverts to the CLT at the end of the lease. Nearly all CLTs charge lease fees that are below the land's fair rental value.[34] Many charge lease fees of merely a few dollars a month. Thus the NPV of these lease fees, for most CLTs and for most CLT land, is extremely low. So too is the land's reversionary value. When a leasehold comes back into a CLT's possession, it is immediately leased out again on similar terms – at a below-market lease fee – to another low-income homeowner. It makes little sense, therefore, to put a CLT's land onto the local tax rolls at either its sales price or its "highest and best" market value. Nevertheless, it happens – to the eventual detriment of the low-income homeowners who must pay the rising taxes on this inflated value.[35]

- **VALUE OF BUILDINGS**. Ideally, the assessed value of any buildings that are located on the CLT's land should reflect the perpetual encumbrance that the CLT's ground lease has imposed on the use and value of these buildings. As long as this encumbrance is in place, it reduces the building's market value. Thus the

[34] This may not be true for CLTs working in severely disinvested neighborhoods, where the fair rental value of land is very low – or non-existent. In these cases, the lease fee charged by a CLT may actually exceed the fair market value of its land.

[35] Acknowledging these realities, the city assessor in Albuquerque, New Mexico, for one, has concluded that the land held by the ***Sawmill Community Land Trust*** has no value at all. Other assessors in other communities have made NPV calculations of a CLT's income stream and concluded that a CLT's land does have a taxable value, but one that is far below lands that are leased for a market-rate rent. On Orcas Island, for example, in Washington State, the local assessor has decided that the encumbered value of the lands owned and leased to individual homeowners by the ***OPAL Community Land*** Trust is 40% lower than their market value. CLTs in New Hampshire, by contrast, are paying property taxes on values that are based on the highest-and-best use of a CLT's land. Assessors there have taken account of neither the below-market lease fees being charged to CLT homeowners nor the distant and miniscule reversionary value of these lands, a policy that has slowed the development of CLT housing throughout the state.

building's assessed value – and the taxes a town can expect it to pay – should be lower than those for a similar building that is not so encumbered. This was, in fact, the reasoning of the New Jersey Appellate Court in the 1989 case *of Prowitz v. Ridgefield Park Village* (568 A.2d 114). Although long-term control over the resale price was imposed by a deed restriction instead of by a ground lease in the New Jersey case, the Court's reasoning is "on point" for a CLT. Upholding the lower taxation of resale-encumbered property, the Court stated: "The deed restriction limiting resale price constitutes a patent burden on the value of the property, not on the character, quality or extent of title. It is, moreover, a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this State's woefully inadequate inventory of affordable housing." The opinion of a New Jersey court is, of course, not binding on the courts of other states. Even so, when CLTs have provided local assessors with a copy of the written opinion from *Prowitz v. Ridgefield Park Village* many have agreed that the reasoning is sound. Proceeding from that point, however, there is wide disagreement over what the correct ***encumbered*** value of the building should be – although most assessors have concluded that the building's resale-restricted selling price is the value that should form the basis for their assessment.

- **RATE OF INCREASE**. Prices rise, not only for market-rate homes but also for resale-restricted CLT homes. It follows that tax assessments should increase as well. Resale prices seldom rise as fast for the latter, of course, which is what resale-restricted housing is all about. The formula-determined price of a CLT home, under most resale formulas and under most conditions, tends to rise on a trajectory that is lower and flatter than the trajectory followed by market-priced homes without resale controls. The argument made to local assessors by the sponsors and owners of shared equity housing, therefore, is that post-purchase adjustments to the assessments and taxes of CLT homes should take these long-lasting controls into account. When persuaded by this argument, a local assessor is still confronted by the considerable challenge of determining the actual impact of these affordability restrictions on the rising value of a CLT home. Many assessors adjust their valuation of CLT homes already on their tax rolls by looking to the prices actually paid for comparable resale-restricted homes that have recently changed hands within the same neighborhood. Some assessors calculate the maximum price for which a CLT home ***could*** have sold, based on the resale formula appearing in the home's ground lease, adjusting the home's value accordingly.[36] Some assessors simply determine that the assessed value of shared eq-

[36] In Boulder, CO, the county assessor has agreed to accept valuations provided by the municipal and nonprofit sponsors of resale-restricted housing. City officials who are charged with monitoring and enforcing the affordability restrictions on 470 deed-restricted homes created through inclusionary zoning calculate the maximum resale price of every inclusionary unit in their inventory, applying the indexed resale formula contained in each home's affordability covenant. These formula-determined resale prices are reported to the county assessor every year for taxation purposes and biennial reassessments. ***Thistle Community Housing***, a Boulder nonprofit that operates a CLT program under its corporate umbrella, uses the same approach in annually reporting to the county assessor the formula-determined resale prices for which all of its CLT homes *could* be resold.

uity homes should rise at a rate that is 5% lower, 25% lower, 40% lower or some other percentage below whatever the increase might be for market-rate homes. Although these percentages sometimes look suspiciously like a number that was grabbed out of thin air, they at least represent an acknowledgment that the formula-driven price of a shared equity home is rising at a rate that is lower than the market-driven price of homes without resale controls.

Appendix A

H11966 CONGRESSIONAL RECORD – HOUSE *October 5, 1992*

SEC. 212. HOUSING EDUCATION AND ORGANIZATIONAL SUPPORT FOR COMMUNITY LAND TRUSTS

(a) COMMUNITY LAND TRUSTS. --- Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773) is amended -

(1) in subsection (a)(2) by inserting "including community land trusts," after "organizations";

(2) in subsection (b), by adding at the end the following:

(6) COMMUNITY LAND TRUSTS. --Organizational support, technical assistance, education, training, and community support under this subsection may be available to community land trusts (as such term is defined in subsection (f) and to community groups for the establishment of community land trusts"; and

(3) by adding at the end of the following:

*(f) **DEFINITION OF COMMUNITY LAND TRUST**.---For purposes of this section, the term "community land trust" means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 104(6) shall not apply for purposes of this subsection)--*

"(1) that is not sponsored by a for-profit organization;

"(2) that is established to carry out the activities under paragraph (3);

"(3) that--

"(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

"(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

"(C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-and moderate-income families in perpetuity;

"(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

"(5) whose board of directors---

(A) includes a majority of members who are elected by the corporate membership; and

(B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization."

Appendix B
Goals and Criteria for Membership in the National CLT Network

Policy Adopted at the National CLT Conference in Boulder, CO
July 12, 2006

Membership Goals

1. Retain standards for calling an organization a "community land trust" that are ***narrow enough*** to preserve the identity and distinctiveness of the CLT model, as it has been routinely described by ICE for over thirty-five years and as the model has been formally defined in federal law since 1992.

2. Develop standards for admitting an organization to membership in the CLT Network that are ***broad enough*** to include organizations that are close to being or becoming a "classic" CLT, but may lack one or more of the key features contained in federal definition of a "community land trust."

3. Open two doors to participating membership in the CLT Network: one that is marked "CLT Classic" and one that is marked "CLT Variations."

4. Bestow full and equal rights on ***every*** organization admitted to membership in the CLT Network, regardless of the door through which the organization has gained admission to the Network. Rights of membership will include, at a minimum:
   - Access to any technical assistance provided through the CLT Network;
   - Access to the CLT Network's listserve;
   - Access to publications and resource documents produced by the CLT Network; and
   - Reduced fees for conferences and trainings sponsored by the CLT Network.

5. Require a process of application and review for organizations seeking to join the CLT Network. Organizations that are presently members in good standing of the CLT Affiliates Network will be "grandfathered" into the newly constituted CLT Network. All other organizations must apply for membership and demonstrate that the tenure of their housing and the structure of their organization meet the Network's membership standards.

6. Appoint and empower an "Admissions Committee" to determine whether particular organizations meet the eligibility standards for membership in the National CLT Network, acknowledging that "gray areas" will inevitably exist within any set of membership standards. The "Admissions Committee" should have a different composition and a different function from whatever committee is charged with responsibility for nominating and selecting members of the Network's governing board.

Criteria for Membership in the National CLT Network

KEY FEATURES	CLT CLASSIC	CLT VARIATIONS
PURPOSE	A CLT has among its purposes the provision of decent housing that is affordable to persons of low-income or moderate-income, with a primary purpose of meeting the needs of "charitable" populations, as defined by the IRS..	The organization has among its purposes the provision of decent housing that is affordable to populations whose housing needs are not being met by the private market.
CORPORATE STATUS	A CLT is a private, nonprofit corporation that: (i) has a 501(c)(3) or (4) tax exemption; (ii) is not sponsored by a for-profit organization; and (iii) reserves no more than a third of its board for appointees or employees of a local government.	The organization is a private, nonprofit corporation that is not sponsored by a for-profit organization.
LAND OWNERSHIP	A CLT acquires parcels of land that are then: (i) owned in perpetuity by the CLT; and (ii) conveyed under long-term ground leases.	The organization acquires parcels of land that are then either: (i) owned in perpetuity by the organization and conveyed under long-term ground leases; or (ii) sold to another party subject to deed covenants regulating the land's use and resale in ways similar to a CLT ground lease.
HOME OWNERSHIP	For owner-occupied housing, a CLT transfers ownership of structural improvements that are located on leased parcels of land to home-owner/lessees.	For owner-occupied housing, the organization transfers ownership of structural improvements located either on land that is leased from the organization or on land that is sold to another party, subject to deed covenants. Alternatively, the organization retains ownership of both the land and improvements, but conveys to the housing's occupants essential rights and responsibilities of homeownership using a long-term, inheritable lease.
PERMANENT AFFORDABILITY	A CLT retains a preemptive option to purchase any structural improvements at a price determined by a formula that is designed to ensure such improvements remain affordable in perpetuity for persons of low-income or moderate-income.	The organization controls the resale of residential property through a durable contractual mechanism designed to ensure such property remains permanently affordable to populations whose needs are not being met by the private market, especially persons of low-income or moderate-income.
SERVICE AREA	A CLT serves any particular geographic area specified in the bylaws of the organization.	The organization serves any particular geographic area specified in the organization's bylaws or in policies adopted by the organization's board of directors.
CORPORATE MEMBERSHIP	A CLT has a corporate membership that is open to any adult resident of its service area and to any other class of members defined in the organization's bylaws.	The organization is structured and operated to remain directly accountable to the residents of its service area.
BOARD COMPOSITION	A CLT's board of directors is composed of equal numbers of: (i) lessees; (ii) corporate members who are not lessees; and (iii) any other category of persons described in the bylaws of the organization.	Included among the organization's directors, making up at least a third of the board, are representatives of the population being served by the organization's projects and programs.
BOARD SELECTION	A majority of the directors on a CLT's governing board are elected by the corporate membership.	The directors of the organization's governing board may be elected by the corporate membership or by other members of the board, as long as some structure exists to ensure the board's accountability to the residents of its service area.

Appendix C

Comparison of CLT Model vs. Conventional Mortgage Subsidy Program for Low-income Homebuyers

Initial and Long-Term Affordability: CLT vs. Mortgage Subsidy for Market-rate House	CLT Model	Conventional Mortgage Subsidy	Notes
Development/Acquisition Cost			
Land	$ 30,000	$ 30,000	
Improvements	$ 90,000	$ 90,000	
Total Development Cost	$ 120,000	$ 120,000	Assume appraised value = development cost
Subsidy Provided			
Subsidize Land Cost	$30,000	$0	Land cost is *permanently* removed from the CLT transaction
Gap Financing Loan	$0	$30,000	Typical soft second loan (2% simple interest, due on sale)
Sale Price to Qualified Household (Buyer #1)	**$ 90,000**	**$ 120,000**	
Market Value in 10 Years			Assume: 6% increase in land & improvements value
Value of Improvements Only	$ 161,176		Appraised value after 10 yrs. -- improvements only
Value of Land and Improvements		$ 214,902	Appraised value after 10 yrs. -- improvements and land
Increase in Property Value (Appreciation)	$ 71,176	$ 94,902	
Percentage of Appreciation Allowed Buyer #1	25%	100%	Every CLT develops its own resale formula. The formula used here gives CLT homeowner 25% of the *house's* appreciation.
Amount of Appreciation Taken by Buyer #1	$ 17,794	$ 94,902	
Amount of Subsidy Payback	$0	$ 30,000	Under gap loan program in this example, owner pays back $30,000 subsidy at resale, plus 2% simple interest.
Plus 2% Simple Interest Accrued	$0	$ 6,000	
Buyer #1 Share of Value Increase	$ 17,794	$ 58,902	Any downpayment recovered and principal amortized would add to the homeowner's total equity under both models.
Sale Price of Home to Buyer #2	**$ 107,794**	**$ 214,902**	CLT sells to Buyer #2 for the house's original sales price plus the appreciation taken by Buyer #1. No land cost included in the deal.

Year	Market Value	Inflation
	$ 120,000	$ 7,200
1	$ 127,200	$ 7,632
2	$ 134,832	$ 8,090
3	$ 142,922	$ 8,575
4	$ 151,497	$ 9,090
5	$ 160,587	$ 9,635
6	$ 170,222	$10,213
7	$ 180,436	$10,826
8	$ 191,262	$11,476
9	$ 202,737	$12,164
10	$ 214,902	$12,894

Appendix D

Removal, Recapture or Retention:

Three Policies for the Subsidization of Owner-occupied Housing

	Subsidy Removal	Subsidy Recapture	Subsidy Retention
Recipient of the subsidy	Individual homeowner	Individual homeowner	Corporate sponsor, usually a community development corporation, CLT, or LEC.
Form of the subsidy	Grant or non-amortizing loan to the homeowner	Loan to the homeowner	Grant or loan to the corporate sponsor
Price paid by homeowner at initial purchase	Total development cost or appraised value of the home	Total development cost or appraised value of the home	Total development cost, minus the amount of the subsidy.
Price paid to homeowner when home is resold	Market value of the property	Market value of the property	Price determined by a resale formula contained in a deed covenant, ground lease, or an LEC's bylaws and shares.
Disposition of subsidy at resale	Subsidy pocketed by the seller.	Subsidy recaptured by the lender (in whole or in part) and then re-loaned to next low-income homebuyer.	Subsidy retained in the property, lowering its purchase price for the next low-income homebuyer.
Price paid by next homebuyer	Market value of the property	Market value of the property	Formula-determined price paid by the corporate sponsor in repurchasing the home from the first owner.
Need for additional investment of public funds (in a rising market) to assist the next low-income homebuyer	More public investment is ***always*** needed, since none of the original subsidy is available to close the gap between the buyer's income and the property's increased market value.	More public investment is ***usually*** needed, since recaptured funds are seldom sufficient to close the gap between the buyer's income and the property's increased market value.	More public investment is ***not*** needed, if the resale formula has performed as expected in maintaining an affordable price for the next low-income homebuyer.

Source: John Emmeus Davis. 2006. *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*. Montclair, NJ: National Housing Institute.

Appendix E

About the Author

John Emmeus Davis is a founding partner of Burlington Associates in Community Development LLC, a national consulting cooperative specializing in the development of organizations, policies, programs, and projects promoting resale-restricted, owner-occupied housing. Since 1993, the cooperative's seven partners have assisted nonprofit organizations, municipal governments, and state agencies in 38 different states.

Several of the partners in Burlington Associates, including Davis, have been leading members of the community land trust movement since the early 1980s, helping dozens of new CLTs to get established and many mature CLTs to increase the sustainability of their portfolios and their operations. In 2005, Burlington Associates created a "CLT Resource Center" on its web site (www.burlingtonassociates.com), offering free copies of training materials, legal documents, program evaluations, and other technical materials developed by BA's partners over many years.

Davis previously served for ten years as Burlington, Vermont's housing director. He also planned and coordinated the city's Enterprise Community. Prior to employment with the City of Burlington, Davis worked for the Institute for Community Economics in Cincinnati and Boston.

Davis is a graduate of Vanderbilt University and Cornell University, holding an M.S. and Ph.D. from the latter. He has taught housing policy and neighborhood planning at New Hampshire College, the University of Vermont, and the Massachusetts Institute of Technology. His publications include *The Community Land Trust Handbook* (1984), *Contested Ground: Collective Action and the Urban Neighborhood* (1991), *The Affordable City: Toward a Third Sector Housing Policy* (1994), *Bridging the Organizational Divide: The Making of a Nonprofit Merger* (2002), *Permanently Affordable Homeownership: Does the Community Land Trust Deliver on Its Promises?* (2003), and *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing* (2006). He is presently a faculty associate at the Lincoln Institute of Land Policy and a research fellow at the National Housing Institute.