

Starting a Community Land Trust

ORGANIZATIONAL AND OPERATIONAL CHOICES

Special Topics

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.

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This is one chapter of an introductory manual, *Starting a Community Land Trust: Organizational and Operational Choices*, prepared by John Emmeus Davis, a Partner in Burlington Associates. The full manual is available on-line at the ***Burlington Associates CLT Resource Center***: www.burlingtonassociates.com.

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.¹
- ❖ **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.²

¹ 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 Community Land Trust* (Berkeley, CA), and *Thistle Community Housing* (Boulder, CO).

² 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).

- ❖ **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.³

- ❖ **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 period, while they are preparing to become homeowners, typically lasts from one to five years.⁴

- ❖ **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.⁵

- ❖ **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

³ 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.

⁴ 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 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).

⁵ 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.

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.⁶

- ❖ **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.⁷
- ❖ **OPEN SPACE.** Urban CLTs have acquired, managed, and protected land that is undeveloped (or partially developed) for inner-city parks and community gardens.⁸ CLTs outside of urban areas have acquired and leased lands for agriculture, forestry, recreation, or conservation.⁹

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

⁶ CLTs with the most experience developing housing containing a mix 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).

⁷ 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.

⁸ 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).

⁹ 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).

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 should the CLT be the owner and manager 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?¹⁰
 - (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?
 - (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.

¹⁰ 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."

- ❖ **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.¹¹ 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 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

¹¹ 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).

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 INDIVIDUAL 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 not 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.¹² CLTs are not exempt from these restrictions on conversion, despite the CLT’s 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

¹² 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.

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	
	<i>NHA Appointed</i>	<i>Board Appointed</i>	<i>NHA Appointed</i>	<i>Membership Elected</i>	<i>NHA Appointed</i>	<i>Membership Elected</i>
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 nonprofit 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 that was 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.¹³

- ❖ **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.

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

¹³ 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.

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.¹⁴ 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

¹⁴ 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.

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.¹⁵

- ❖ **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 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

¹⁵ 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.

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.¹⁶ Some assessors simply determine that the assessed value of shared equity 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.

¹⁶ 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.