

National Community Land Trust Network 2008 Foreclosure Survey – Report October 26, 2009

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Introduction

In February and March of 2009, the National CLT Network, with assistance from the Lincoln Institute on Land Policy, conducted a survey of Community Land Trusts across the country in order to assess the mortgage delinquency and foreclosure situation among CLT homeowners at a time of record high foreclosure rates nationwide. Surveys were sent by email to 180 Community Land Trusts in the United States and Puerto Rico, for which the CLT Network had contact information. Some CLTs are programs within a larger housing organization. These were included in the survey. Respondents were asked about resale-restricted homeownership units that have residential mortgages on them. This would include single, double or three-family houses, mobile homes? or condominiums with mortgages, but not rental units or co-operatives. To our knowledge there are no CLT homeowners of 4-unit buildings. The survey was designed to be comparable to the National Delinquency Survey conducted by the Mortgage Bankers Association of America of its members, which asks about mortgage delinquencies and foreclosures among residential 1-4 family mortgages as of the last day of each quarter. (See <http://www.mbaa.org/ResearchandForecasts/ProductsandSurveys/NationalDelinquencySurvey.htm> for more information about the MBAA delinquency survey.)

Of the 76 respondents, 50 CLTs had land in their inventory on which the homeowners had residential mortgages. Some of the remaining 26 respondents are start-up organizations and may not have homes completed yet, while others focus on co-op units, which don't have individual mortgages. The 50 CLTs whose homeowners have residential mortgages are located in 26 states, including the states hardest hit by foreclosures, like California, Florida, and Ohio. Respondents reported on a total of 1936 outstanding mortgages. In the report below, "survey respondents" are considered to be those 50 CLTs that reported on residential mortgages.

Mortgages on Community Land Trust Homes

Survey respondents were questioned about the top three lenders to CLT homeowners and the number of mortgages from these lenders. Lenders on CLT homes included local, regional and national banks, credit unions, state housing finance agencies, local Habitat for Humanity organizations, Neighborhood Housing Services (local affiliates of NeighborWorks America) and United States Department of Agriculture Rural Development loans. Few of the banks reported on served more than one CLT. Of the 70 lenders named, 22 were named by more than one CLT as being among their top lenders. The top lenders by frequency of being among the top three lenders for CLT homes were:

Wells Fargo, Washington Mutual, USDA Rural Development, Habitat for Humanity, US Bank and the Peoples Bank (in Washington state).

In 2001, Fannie Mae established uniform criteria for mortgages on CLT homes that it would purchase on the secondary market. Prior to that, almost all CLT mortgages were portfolio products that a local lender would establish based on its knowledge of the CLT organization as well as its assessment of the individual borrower. In the current survey, 29 of the 50 respondents knew how many, if any, mortgages were sold on the secondary market. Of the 1048 mortgages reported on, only 21 percent were sold on the secondary market. The 221 mortgages that were sold came from only 10 of the 29 CLTs reporting on secondary market status.

The relationship with a mortgage lender usually starts with the Community Land Trust organization. As CLTs plan their first developments, they also meet with lenders to educate them about the CLT program and encourage them to take the steps necessary within their institution to be able to make CLT mortgages. Only six (6) CLTs reported a mixture of portfolio and secondary market mortgages. Most routinely have either all or none of their homeowners' loans purchased on the secondary market.

Because CLTs are involved in the transaction in some way – as owner of the land, as developer, as party to the land lease – they are able to exercise control over the quality of the mortgages that homeowners take on. (See below for circumstances in which CLTs' control has been circumvented.) Three-quarters (75%) of the Community Land Trusts reporting do not allow CLT homeowners to take on anything other than a fixed rate mortgage. In the survey, CLTs that allowed non-fixed-rate mortgages usually report having specific loan products - such as ones offered by state housing finance agencies – that limit the potential increase in the interest rate. A very few CLTs reported that a few homeowners had so-called “5-1 ARMs” – adjustable rate mortgages that have a fixed rate for 5 years and then re-set annually after that.

In a typical homeownership transaction, the lender's collateral is the home and the land. With a CLT homebuyer, the land may or may not be pledged. This is a controversial area for Community Land Trusts - does the CLT allow a homeowner to pledge the land (which the CLT owns) in addition to the home in taking out a mortgage. Most CLT mortgages are leasehold mortgages, wherein the collateral for the mortgage is the house and the “leased fee” – the homeowner's exclusive right to use of the land. Ten (10) of 49 respondents reported that their CLT allows the mortgage to include the land as collateral. In some of these cases, the CLT uses a deed restriction, rather than land ownership, to enforce resale restrictions. Others made accommodations to lenders in order to attract better financing terms or just to attract that lender.

The model ground lease that is the basis of most Community Land Trusts' lease agreements with CLT homeowners requires the CLT's review and permission if a homeowner wants to refinance his or her mortgage or take on a second mortgage. A memorandum of the ground lease is usually recorded, so a title search by any lender should turn up the leasehold arrangement. Although the terms of the ground lease are

legally binding, one third (34%) of CLTs in the survey reported that homeowners have refinanced or taken on new debt without the CLT's permission. Actions that CLTs have taken in situations of non-permitted debt have varied from allowing loans that would meet the CLT's criteria anyway to taking - or helping homeowners take - legal action to nullify the loan or change its terms. Because the resale price of a CLT home is usually lower than the market value of the home if it were sold fee simple, CLT homeowners risk being upside down on their mortgage/s if they take on too much debt. In several cases reported on, the ground lease provisions have proven effective in challenging non-permitted debt:

“In one case, we coached the owner through working with her lender to get the note released. In another, the lender falsely encumbered the land with their Deed of Trust. This took much legal help and time, and in the end the Deed of Trust was modified.”

“In one case we were able to counsel the homeowner and put them in contact with the...state's attorney general who counseled her to enact her Right of Rescission to get out of what would have been a catastrophic loan.”

Homebuyer Preparation among Community Land Trusts

Homebuyer preparation is increasingly recognized as a key factor in foreclosure preventions (citation?) Ninety percent (90%) of Community Land Trusts surveyed require CLT buyers to participate in a homebuyer education program, whether at the CLT or through referral to another agency. Five respondents (10%) make such classes optional or don't require them.

Mortgage Delinquencies among CLT Homeowners

CLTs were asked about the mortgage delinquency status of the loans made to CLT homeowners. For purposes of this survey, a delinquent mortgage was defined as a first mortgage on which the homeowner has not made a payment for 90 days or more. The survey asked the number of mortgages that were 90+ days delinquent at some point in 2008 and the number that were delinquent on December 31, 2008. Of 1844 mortgages on which the status was known, 45, or 2.4% were delinquent at some point during 2008. On December 31, 2008, 26 of 1821 (1.4%) mortgages were 90+ days delinquent. Nationally, the Mortgage Bankers Association reported that 3.74 percent of all prime loans were 90+ days delinquent, while 23.11 percent of subprime loans were seriously delinquent at the end of the fourth quarter of 2008.

(<http://www.mortgagebankers.org/NewsandMedia/PressCenter/68008.htm>) Lenders can start foreclosure proceedings once a loan is 90 days delinquent.

It is possible that CLTs' reporting of delinquencies is low because the CLT has not yet learned of a delinquency. Indeed, CLTs taking a test version of the survey that asked about mortgages that were 30 days delinquent (which the Mortgage Bankers are able to measure) reported that they did not have confidence that they would have learned of a delinquency that early. They were confident that they would learn of a 90+ day delinquency. The much lower rate of foreclosure proceedings (see below) among CLT homeowners suggests this confidence is valid.

The survey also asked about mortgage delinquencies that were cured. Respondents reported that 45 mortgages became 90+ days delinquent in 2008. In 2008, 27 mortgages were cured. The MBAA survey doesn't track delinquencies or foreclosure filings through to resolution. Community Land Trusts have been actively engaged in efforts to prevent foreclosure among CLT homeowners. More than half of survey respondents have provided financial counseling to homeowners (58%), made referrals to foreclosure prevention programs (32%) and/or contacted lenders on behalf of homeowners (44%). About a third of CLTs have taken stronger steps: provided emergency funding (30%); purchased a home before foreclosure (34%); or helped the homeowner to sell the home before foreclosure (32%).

A large factor in whether a Community Land Trust is able to work with a homeowner to cure a default is simply being able to learn if a homeowner is falling behind in payments. Although the ground lease (the agreement between the homeowner and the CLT) usually requires a homeowner to submit copies of any notices received from a lender, homeowners are often reluctant to share information when they are in financial trouble. CLTs often use lack of payment of the monthly land lease fee as a marker for mortgage delinquency, but it is an unreliable method of tracking mortgage payments. We asked CLTs about the barriers to learning of mortgage delinquencies. Owner reticence and lack of cooperation from lenders were the reasons most cited. Some comments:

“Our lenders have set up flag notes to notify us about delinquencies, but they don't seem to follow through on them. We have yet to find a reliable system to get lenders to give us early notification of delinquencies.”

“Even with a signed third party release of information form, the notification requirements seem to get lost after sale of the mortgage on the secondary market.”

“We have a great working relationship with the two primary lenders. They always call us when a homeowner becomes seriously delinquent. For the very few loans that are serviced through other providers, our only hope [is] the ground lease requirement to notify us before foreclosure....Our biggest barrier is the homeowner themselves. If they don't want help, there is nothing we can do, but that is usually very rare.”

“We record requests for ‘notice of default’ (NOD) for all layers of loan financing recorded against the property. NODs notify us when a loan begins foreclosure proceedings, but not delinquent payments.”

Although most Community Land Trusts have a first right to repurchase a home that goes through foreclosure, intervention before foreclosure proceedings start is often successful in keeping a homeowner in her or his home. But CLTs find themselves relying on trust and good will – rather than reliable and binding written agreements – to learn of delinquencies in the first place. Even so, the rate of serious delinquencies among CLT homeowners is very low compared to all homeowners. Foreclosures are even rarer.

Foreclosures Amongst CLT Homeowners

Of the 1930 CLT mortgages on which foreclosure status was known, on December 31, 2008, 10 of those mortgages (0.52%) were somewhere in the foreclosure process – meaning foreclosure proceedings had started but were not complete. This compares with 3.3 percent of mortgages in foreclosure on December 31, 2008, in the Mortgage Bankers delinquency survey. Community Land Trust mortgages were six times less likely to be in foreclosure than all mortgages nationally.

CLTs were queried about the number of homes that have been lost to foreclosure – that is, went all the way through the foreclosure process – in 2008. Five homeowners lost their CLT homes to foreclosure in 2008. Among the CLTs responding, only 13 homes have been lost to foreclosure since CLT inception.

Even if a family is unable to keep its home due to foreclosure, foreclosed homes almost always remain in the Land Trust inventory, due to the CLT's first right to purchase the home from the lender. In the survey, resale restrictions were lost on one house in 2008, out of 1936 mortgages reported on.

Although foreclosures among Community Land Trust homeowners are rare, they do occur, and CLTs are starting to develop practices to ensure that foreclosed homes retain their income and resale restrictions. (Most mortgage lenders require that income and resale restrictions terminate on foreclosed CLT properties. A CLT must purchase the home or arrange for a purchase from a qualified buyer to retain the restrictions on the house.) Almost two-thirds of survey respondents (64%) reported having some mechanism in place to redeem CLT homes after foreclosure. Twenty two percent (22%) have a marketing plan for rapid resale of a foreclosed property, while 28 percent have cash reserves for a down payment to be able to enact their first right of purchase of a foreclosed property. Only 18 percent of CLT respondents have a line of credit in place to be able to purchase a foreclosed CLT property. Smaller CLTs may have a more difficult time putting these practices into place. Because the incidence of foreclosure is very low for CLTs overall, this may be a situation that the National CLT Network could help CLTs address through pooled resources. A Michigan CLT reported that the state housing development authority is ready to help a community land trust buy and resell foreclosed homes.

Conclusion

The survey measured mortgage delinquencies and foreclosure among Community Land Trust homeowners. Considering CLT homeowners who were seriously delinquent (more than 90 days) on their mortgage payments or whose lender had started foreclosure proceedings on December 31, 2008, the survey was designed to compare with the results of the fourth quarter 2008 National Delinquency Survey conducted by the Mortgage Bankers Association of America. Community Land Trust homeowners were far less likely to be delinquent on their mortgages or in foreclosure than other homeowners in the United States. While 3.3 percent of all homeowners were facing foreclosure proceedings at the end of 2008, 0.52 percent of CLT homeowners' mortgages were in foreclosure.

Community Land Trust homeowners have incomes at or below the median income for their location – sometimes as low as 50% of the median. Such homeowners have been shown to be at greatest risk of foreclosure (citation??), though foreclosures are rising among homeowners of all income levels. Yet the incidence of both serious delinquency and especially foreclosure among CLT homeowners are well below national rates. While the survey can't establish a causal relationship between CLT activities and lower foreclosure rates, survey results do show Community Land Trusts providing a panoply of policies and programs that they relate to foreclosure prevention. Community Land Trusts by and large: require homebuyer preparation classes (90%); assess the mortgages of buyers and permit only fixed-rate mortgages (75%); structure legal documents to prevent unwise refinancing and intervene to protect the CLT's interests along with the homeowner's; intervene when a homeowner gets into trouble on a mortgage; and work to save the public's investment in affordable homes in the rare cases when a foreclosure happens. But CLTs report two persistent barriers to these efforts: homeowners and lenders not notifying the CLT of mortgage delinquency. Human tendencies to bury our heads in the sand when it comes to bad news; lenders could better address this problem by working more collaboratively with CLTs.