Building Better City-CLT Partnerships

A Program Manual for
Municipalities and Community Land Trusts

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Lincoln Institute of Land Policy
Working Paper

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Lincoln Institute Product Code: WP08JD1

Abstract

The number of community land trusts (CLTs) in the United States has grown rapidly in recent years, due largely to the expanding investment and involvement of local government. Municipalities are supporting CLT start-ups, CLT projects, CLT operations, and the equitable taxation of resale-restricted CLT homes. This city-CLT partnership is still evolving, however, with municipal officials and CLT practitioners still exploring the most effective ways of working together. The present manual is necessarily a work in progress, documenting the "best" practices devised to date. These are practices that use public resources to expand a CLT's holdings, while respecting what makes a CLT unique and while addressing a municipality's reasonable concerns about a CLT's performance and sustainability.

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Executive Summary

The CLT movement is young, but growing rapidly. There are now over 200 community land trusts in the United States. None of them existed in 1970. Half of them did not exist in 2000. The growth is continuing. Nearly twenty CLTs are being started every year, either as internal programs of an existing organization or as new nonprofits started from scratch. CLTs are now holding land, developing housing, revitalizing neighborhoods, stewarding assets, and capturing value for the benefit of future generations in 40 states and the District of Columbia.

The recent proliferation of CLTs has been fueled, in large measure, by the investment and involvement of local governments in starting, expanding, and sustaining CLTs. Such municipal support has increased dramatically during the past decade. Especially in jurisdictions where a city, county, or town has put a social priority on promoting homeownership for lower-income families, while placing a fiscal priority on protecting the public's investment in such housing, CLTs have become favored partners of local government.

Municipal resources are offered to a community land trust because municipal officials are convinced of the CLT's worth and committed to its projects. They have the same stake in seeing the CLT succeed as the CLT's own staff. The challenge lies in finding the most supportive and productive ways of putting these resources to work. Too many municipalities, without meaning to do so, have structured their assistance, regulated the CLT's activities, or taxed the CLT's homes in such a way as to undermine the productivity and sustainability of the model they have decided to support. By contrast, other municipalities have gone out of their way to understand the peculiarities of this new model of resale-restricted, owner-occupied housing and, where necessary, have made adjustments in their programs, regulations, and taxes to help the CLT to thrive.

We have documented both kinds of practices in the present report: those that accidentally impede the CLT and those that seem to us – and to many of the municipal officials and CLT practitioners whom we interviewed – to have the greatest potential for establishing a CLT, expanding its portfolio, sustaining its operations, and preserving the affordability of its homes. The city-CLT partnership is still evolving; so is the national consensus about which practices might be the "best" when it comes to supporting a CLT. By presenting our findings as a Working Paper, we hope to spur a wider conversation among municipal officials and CLT practitioners about what is working – and what is not. Over the coming year, we shall solicit their comments and criticisms with an eye toward refining the recommendations contained of this Working Paper. By the end of 2009, we shall publish a substantially revised Program Manual that can be used by municipalities and CLTs to build better partnerships.

Table of Contents

Executive Summary i
Municipal Support for Community Land Trusts: In Search of Best Practices 1
The Rationale for Municipal Support 2
The CLT: Classic Features and Common Variations 6
Balancing the Reasonable Concerns of Municipality and CLT: In Search of Best Practices 11
Seeding the Model: Municipal Support for CLT Start-ups 14
A Start-up Checklist 14
A Menu of Municipal Support 16
Balancing the Concerns of Municipality and CLT 21
Building the Portfolio: Municipal Support for CLT Projects 27
Structuring Homeownership Subsidies 27
A Menu of Municipal Support for Homeowner Projects 30
Balancing the Concerns of Municipality and CLT 36
Sustaining the Organization: Municipal Support for CLT Operations 44
The Need for Operating Support 44
Menu of Sources of Operating Support 45
Balancing the Concerns of Municipality and CLT 51
Taxing the Property: Municipal Assessment of CLT Homes 56
Effect of Property Taxes on Affordability 56
Menu of Municipal Options for Taxing CLT Homes 57
Balancing Concerns of the Municipality and CLT 61
Regulating the Program: Municipal Oversight of CLT Activities 67
Menu of Municipal Oversight 67
Balancing the Concerns of Municipality and CLT 79
Planning for the Worst: Municipal Contingencies for CLT Failures 82
Failure to Act in Protecting the Occupancy and Condition of CLT Homes 82
Menu of Measures for Dealing with a CLT Failure 83
Preferred Elements of City-CLT Regulatory Agreements 86
Balancing the Concerns of Municipality and CLT 87
Reflecting on the Future: Trends and Challenges in the City-CLT Partnership 93
From City-as-Supporter to City-as-Instigator 93
From City-as- Participant to City-as-Governor 95
From CLT-as-Developer to CLT-as-Steward 99
Appendix: Persons Interviewed or Consulted 103
Bibliography 105

Municipal Support for Community Land Trusts: In Search of Best Practices

There were only a handful of community land trusts in the United States at the start of the 1980s, all of them located in rural areas. By 2008, over 200 CLT programs were up and running – half of them established since 1999. Now concentrated mostly in cities and suburbs, these CLTs are busily acquiring scattered parcels of land, developing affordable housing, and revitalizing communities in 40 states and the District of Columbia.

The recent proliferation of CLTs has many causes, but none more influential than the investment and involvement of local government in starting, expanding, and sustaining CLTs. Such municipal support has increased dramatically during the past decade. The number, size, and productivity of CLTs have increased on the same trajectory, over the same span of time.

The earliest CLTs were started by grassroots activists with little or no support from local government.[1] Indeed, most of the CLTs that arose prior to 1990 were organized in opposition to municipal policies, projects, and plans, especially in neighborhoods beset by alternating cycles of disinvestment and reinvestment. In many communities of color that is still true today, where CLTs are being erected as bulwarks against market pressures of speculation, gentrification, and displacement made worse by the actions of City Hall.

There are a growing number of cities, counties, and towns, however, where a CLT has become a partner of municipal government – an ally rather than an antagonist. Especially in places where a local government has put a social priority on promoting homeownership for lower-income families, while placing a fiscal priority on protecting the public's investment in affordable housing, CLTs have become favored recipients of municipal investment.

- They receive administrative support from municipal staff or financial support from municipal coffers in planning and starting the CLT.
- They receive donations of city-owned land, grants of municipally-controlled funds, and low-interest loans in developing and financing the CLT's projects.
- They receive capacity grants, development fees, and revenues from marketing and managing resale-restricted housing, funds directed toward sustaining the CLT's operations.
- They receive equitable tax assessments on CLT homes, ensuring that low-income homeowners are not taxed on values they can never claim for themselves.
- They partner with municipalities in enforcing long-term controls over the eligibility, occupancy, and affordability of housing extracted from private developers

[1] There were exceptions. In 1983, a progressive government in **Burlington VT** instigated and provided administrative support and a $200,000 start-up grant to establish the Burlington Community Land Trust (later renamed the Champlain Housing Trust). In 1986, Time of Jubilee Inc., a CLT established in **Syracuse NY**, partnered with the City's Community Development Department to build affordable homes in a disinvested African-American neighborhood.

through inclusionary zoning, density bonuses, and other regulatory mandates or concessions.

As welcome as the recent growth in municipal assistance has been, such assistance has sometimes been less than helpful. There are too many cases where municipalities have inadvertently structured their assistance in such a way, regulated the CLT in such a way, or taxed the CLT's property in such a way as to undermine the productivity or sustainability of the very model they have decided to support. A conclusion we have reached after examining a variety of municipal programs and after interviewing a number of municipal officials and CLT practitioners is that there are better ways – and worse ways – for a municipality to support the projects and operations of a community land trust. This report is both descriptive and prescriptive, therefore. We not only describe the ***types of assistance*** currently being offered to CLTs by supportive municipalities. We also take a few tentative steps toward recommending the ***best practices*** for rendering such assistance.

The Rationale for Municipal Support

Any assessment of the "best" ways to support a CLT necessarily depends on an understanding of ***why*** municipalities are backing this unconventional model of affordable housing and ***how*** this model differs from the market-rate homes and subsidized rentals that municipalities have traditionally supported. When public officials decide to commit municipal resources toward starting a CLT, expanding a CLT's holdings, or sustaining a CLT's operations they generally do so because they believe the CLT to be an effective vehicle for providing public benefits that a local government is either not equipped or not inclined to deliver. Five such benefits loom especially large.

<u>Preserving the Affordability of Publicly-Assisted Homeownership</u>
Hundreds of cities, counties, and towns have policies and programs that help to bring homeownership within the reach of low-income or moderate-income households. A majority of these municipalities are having a harder time achieving this goal, however. As the cost of subsidizing homeownership has soared, municipalities are being forced to dig deeper into their own coffers. They are also being forced to demand more from any private developers proposing to build housing in their jurisdictions, mandating the inclusion of affordable units or negotiating an affordability component as a condition of a density bonus, parking waiver, or some other regulatory incentive.

Having spent so much and worked so hard to create homeownership opportunities for persons of modest means, municipal officials are increasingly loathe to lose these affordable homes within five to seven years, when most homeowners resell. A growing number of these officials have begun turning to the CLT, along with other models of "shared equity homeownership," to act as the ***steward*** for owner-occupied housing which the municipality has helped to create.[2] They see in the CLT an effective, enforceable, and dura-

[2] Community land trusts, limited equity cooperatives, and deed-restricted, owner-occupied houses and condominiums with affordability controls lasting thirty years or more are sometimes collectively referred to

ble mechanism for preserving the affordability of such housing, ensuring that future generations of low-income or moderate-income households will have access to the same opportunity for homeownership being created for these targeted populations today.

Protecting the Public's Investment in Affordable Housing

As the affordability gap between housing prices and household incomes has grown, so too has the subsidy required to close this gap.[3] With larger subsidies now needed to bring a home within the financial reach of a low-income or moderate-income homebuyer, most municipalities have moved away from the once-common policy of allowing homeowners simply to pocket these subsidies when reselling their homes at a market price. Many municipalities have also abandoned the more recent practice of recapturing these subsidies at resale, realizing that in appreciating markets – and in built-out areas where few reasonably-priced "starter homes" are being produced – the buying power of recaptured subsidies will be eroded over time. Unless augmented by additional infusions of public capital, a shrinking subsidy pool will assist fewer homebuyers every year.[4]

In contrast to policies and programs where public subsidies are either claimed by homeowners at resale (subsidy removal) or returned to the public agency that provided them (subsidy recapture), the CLT locks those subsidies in place (subsidy retention). The public's investment is neither lost nor diminished, but stays in the assisted home, reducing its price for the next homebuyer of modest means; maintaining its affordability, one resale after another.

Backstopping the Security of First-time Homeowners

Too many homebuyer assistance programs, whether publicly-funded or privately-funded, do little to support first-time homeowners *after* they have purchased a home. Even the poorest homebuyers are expected to go it alone, despite the evidence that persons of limited means are more likely to face difficulties maintaining their property and making mortgage payments. They are also more likely to lose their homes.[5]

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as "shared equity homeownership." See John Emmeus Davis, *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-Occupied Housing*. Montclair, NJ: National Housing Institute, 2006.

[3] The ratio of median home prices to median household income nationally increased from 3.1 in 1980 to 4.6 in 2006 (Joint Center for Housing Studies (2007). Metropolitan Area House Price-Income Ratio, 1980-2006. Cambridge, Harvard University.

[4] For a graphic illustration of the erosion of buying power under a policy of subsidy recapture, see the flash animation created by Rick Jacobus at *www.burlingtonassociates.com*

[5] In one study of first-time homebuyers, Carolina Katz Reid discovered that only 47% the low-income homebuyers in her sample still remained homeowners five years after buying a market-rate home (Reid, C. K. (2005). Achieving the American Dream? A Longitudinal Analysis of the Homeownership Experiences of Low-Income Households. St. Louis, MO, Center for Social Development.). Similarly, Thomas Boehm and Alan Schlottmann discovered in a national study "a high likelihood that lower income families will slip back to renting after attaining homeownership. For minority households this probability is quite high" (Boehm, T. and A. Schlottmann (2004). Wealth Accumulation and Homeownership: Evidence for Low-Income Households. O. o. P. D. a. Research. Washington, DC, U.S. Department of Housing and Urban Development.).

A CLT, by contrast, provides continuing back-up for first-time homeowners, in good times and bad: intervening to cure mortgage defaults; acting to prevent foreclosures. A CLT remains permanently responsible for the homeownership opportunities it helped to create, safeguarding everyone's investment – the public funder's, the private lender's, and the homeowner's.

Maintaining the Occupancy and Condition of Assisted Housing

The CLT provides a durable mechanism not only for preserving the affordability of publicly-assisted housing, but for preserving the occupancy and condition of that housing as well. Embedded in the CLT's ground lease are provisions that restrict subletting and require the housing to be continually occupied as the homeowner's principal residence. There are also provisions requiring the housing to be maintained in good repair and to be used and improved in compliance with local building codes, local zoning restrictions, and the CLT's own guidelines.

Reducing the Burdens of Local Government

Any municipality with a well-staffed community development department is completely capable of doing most of what a CLT is routinely asked to do. There are many places, in fact, where a local government has chosen to use its own legal, administrative, and programmatic staff, instead of relying on a nonprofit partner, to carry out the many tasks required to perpetuate affordability, protect the municipality's investment, backstop security for first-time homeowners, and maintain the occupancy and condition of assisted housing. These essential tasks include:

- Overseeing the production of publicly-assisted, privately-owned housing.
- Ensuring that homes created through the dollars, mandates, or incentives of local government are affordably priced.
- Marketing these homes through a fair and transparent process, including
    - developing a fair marketing plan and
    - maintaining a waiting list of interested homebuyers.
- Orienting and educating prospective buyers, including
    - Preparing homebuyers for the responsibilities of homeownership and
    - Ensuring informed consent for the restrictions that encumber these homes.
- Selling the resale-restricted homes to income-eligible buyers, including:
    - Reviewing and documenting the eligibility of prospective homebuyers and
    - Assisting prospective buyers in securing mortgage financing.
- Executing affordability covenants and promissory notes with every homebuyer.
- Monitoring and enforcing compliance with all use restrictions, including
    - Ensuring continuous owner occupancy;
    - Ensuring adequate maintenance; and
    - Verifying that homeowners maintain property insurance and pay all applicable taxes.
- Managing resales to ensure that every home is transferred to another income-eligible household for no more than the formula-determined price.
- Intervening in cases of homeowner mortgage default, including

- Supporting homeowners in preparations and negotiations with lenders;
- Curing defaults; and
- Preventing foreclosures.

Many cities, counties, and towns, however, lack either the desire or the capacity to perform such tasks with their own staff. These municipalities pursue one of three courses of action. They either adopt short-term controls (or no controls) over the future disposition of publicly-assisted, owner-occupied housing; they rely on deed covenants which they believe to be "self-enforcing;" or they find a nonprofit partner *outside* of local government to assume long-term responsibility for the stewardship of whatever affordable housing the municipality has helped to create.

Those who make the first choice eventually discover that short-term controls that allow the removal of subsidies and the loss of affordability are a pretty wasteful way of investing public resources.[6] Those who make the second choice eventually discover there is no such thing as a "self-enforcing" covenant, especially when it comes to controlling the occupancy, improvement, and upkeep of resale-restricted, owner-occupied homes. Even municipally-imposed restrictions on the pricing of resales and the eligibility of future homebuyers can be cleverly circumvented when there is nobody monitoring the transaction.[7]

Municipal officials who make the third choice, assigning all administrative, oversight, and enforcement responsibilities to somebody else, find in the CLT a nonprofit partner that is ready, willing, and able to play this role on the municipality's behalf. Stewardship is the heart and soul of the CLT. Preserving affordability, retaining public subsidies, backstopping security of tenure, and maintaining the occupancy and condition of owner-occupied housing are core commitments woven into the organizational fabric and operational competency a CLT. They are what a CLT does best.

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[6] Not true everywhere, of course. Many municipalities still allow first-time homebuyers to pocket the downpayment assistance they receive from municipal coffers when purchasing or rehabilitating their homes. Many municipalities still impose inclusionary mandates or grant regulatory concessions without requiring lasting affordability for the lower-priced homes produced as a result of these municipal measures. These are becoming exceptions, however, where they were once the rule. Municipalities like **Irvine CA** and **Montgomery County MD**, for example, after seeing thousands of units of inclusionary housing lost to the market because of short-term controls over occupancy, eligibility, and affordability, have finally revamped their housing policies and programs to require long-term affordability.

[7] The flaws and failures of "self-enforcing" deed covenants are described more fully in Davis *op cit*. (2006: 15) and in David Abromowitz and Kirby White, "Deed Restrictions and Community Land Trust Ground Leases: Protecting Long Term Affordable Homeownership."(Abromowitz, D. and K. White (2006). "Deed Restrictions and Community Land Trust Ground Leases: Pro-tecting Long Term Affordable Homeownership " Journal of the Florida Housing Coalition **22** (May): 7-10, 24.). Other excellent discussions of the uses and limitations of deed covenants can be found in Marshall, P. V. and B. E. Kautz (2006). Ensuring Continued Affordability in Homeownership Pro-grams. Sacramento, CA, Institute for Local Government.; and Jeanne Goldie Gura "Preserving Affordable Homeownership Opportunities in Rapidly Escalating Real Estate Markets." Journal of Affordable Housing and Community Development Law **78**(Fall)..

The CLT: Classic Features and Common Variations

The community land trust, in its "classic" configuration, combines an innovative approach to the ***ownership*** of land and buildings, the ***organization*** of the nonprofit entity that owns the underlying land, and the ***operation*** of the CLT as the long-term steward resale-restricted, owner-occupied housing. Although most community land trusts incorporate all three of these elements, the CLT is flexibly and frequently adapted to conditions, circumstances, and priorities that can vary widely from one community to another. This has resulted in enormous diversity among the two hundred CLTs that are currently operating in the United States. The "classic" CLT has ten characteristic features, although variations are common in all of them. The universe of CLTs is not only rapidly expanding, therefore; it is also one that is still evolving.[8]

Ownership: Separating the Tenure of Land and Buildings

CLTs treat land as a common heritage. Rather than being owned and controlled by a fortunate few, land is held in trust for a larger community, present and future. Buildings, by contrast, as a product of individual investment and individual labor, are treated as private property. Community ownership of land and individual ownership of residential improvements helps to distinguish the CLT from other forms of affordable housing commonly supported by the market and the state.

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 already located on the land or 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, a limited partnership, or some other nonprofit, governmental, or for-profit entity.

CLT Variations. Some CLTs, when accepting condominiums into their portfolios, do not own the underlying land. They own only a durable right to repurchase these condominiums for a formula-determined price when their current owners decide to sell. Conversely, when dealing with rental property, residential or commercial, some CLTs retain ownership not only of the underlying land but of the buildings as well.

Leased Land

CLT Classic. CLTs plan never to resell their land, but they do provide for its exclusive ***use*** by persons or organizations who own the buildings on that land. Separate parcels of land are conveyed to individual homeowners (or to the owners of other types of residen-

[8] This description of a CLT's "classic" features and the model's most common variations is based on Davis, J. Starting a Community Land Trust: Organizational and Operational Choices Burlington Associates in Community Development.. Available online at the *CLT Resource Center* (*www.burlingtonassociates.com*).

tial or commercial structures) through renewable, 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 the buildings.

CLT Variations. The exact terms and conditions contained in a CLT's ground lease can vary greatly from one CLT to another, especially restrictions on inspecting, subletting, improving, and reselling the buildings.[9] Condominiums often present a special case, where ground leasing may not be possible. Some condominiums are located on land that is leased from a CLT, but there are many cases where a CLT acquires title to a few condominiums in a large, multi-unit project for which the CLT does not own the underlying land. This has happened most frequently where a CLT has been assigned responsibility for monitoring and enforcing durable occupancy and affordability controls over units created through inclusionary zoning or some other municipal mandate or incentive.

Organization: Establishing and Governing the CLT

The organization of a CLT tends to be as distinctive as the ownership of its property. A CLT is structured to remain accountable to multiple constituencies, each influenced by a different set of interests. All of these interests are represented in the CLT's membership and on the CLT's board.

Nonprofit, Tax-exempt Corporation

CLT Classic. A community land trust is an independent, not-for-profit corporation that is legally chartered in the state in which it is located.[10] 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.[11]

CLT Variations. Although most CLTs are created "from scratch," as newly formed, autonomous corporations, some have been established as successors, affiliates, or programs of an older nonprofit.[12] Either a pre-existing nonprofit transforms itself into a

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[9] Most of these leases are based on the "model ground lease" developed and refined by the Institute for Community Economics (ICE) over the past 30 years. This "model" lease, with a commentary explaining its key provisions, is found in Institute for Community Economics (2002). Community Land Trust Legal Manual. Springfield, MA, ICE.. The lease and commentary are available from the National CLT Network (*www.CLTNetwork.org*) or the CLT Resource Center (*www.burlingtonassociates.com*).

[10] Although every CLT is incorporated in a single state, the service areas of a few CLTs straddle the boundary between states. For example, the Twin Pines Housing Trust owns land and manages leaseholds in both Vermont and New Hampshire. TPHT, incorporated in Vermont, is licensed to do business in New Hampshire.

[11] Some CLTs do not secure a 501(c)(3) designation, either because they choose not to serve a population that is "poor, distressed, or underprivileged" or because the IRS determines that the applicant does not meet the organizational and operational tests for receiving 501(c)(3) status.

[12]. The Lincoln Institute's 2006 survey of 119 CLTs in the United States found that 19% of them were successors, affiliates, or programs of an older nonprofit. See: Yesim Sungu-Eryilmaz and Rosalind Green-

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. In a few cases, 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.

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 neither lease CLT land nor 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 no single 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.[13] 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 government, while others include representatives of local churches, foundations, banks, social service agencies, tenant rights organizations, or local CDCs 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.

Place-based Membership

CLT Classic. The CLT operates within the 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.

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stein, *A National Study of Community Land Trusts,* Cambridge, MA, Lincoln Institute of Land Policy, 2007: 7.

[13] Only 29% of CLTs surveyed by the Lincoln Institute were found to match exactly the "classic" tripartite structure recommended by the Institute for Community Economics (*Ibid*., 21).

CLT Variations. Most CLTs draw members from a community that is geographically defined. Within the diverse world of CLTs, however, there is considerable variation in both the size of that "community" and the make-up of that membership. A decade ago, the community served by most CLTs was a single urban neighborhood or a small rural area. That has changed. Today, roughly 70% of CLTs have a much wider service area, encompassing multiple neighborhoods, an entire city, an entire county, or, in a few cases, a multi-county region.[14] There are also variations 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. Some have expanded their membership beyond individuals, allowing nonprofit corporations, local governments, or private institutions like hospitals, churches, businesses, or a community foundation to become voting members of the CLT. There are a few CLTs with no membership at all.[15]

Resident 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.[16]

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 part or in its entirety by a municipal government, a community foundation, or some other sponsor.

Operation: Managing and Expanding the CLT's Holdings

The distinctive operation of a CLT is rooted in a form of tenure that allocates the rights and responsibilities of a property's ***ownership*** between two different parties and in a form of organization that allocates the rights and responsibilities of a CLT's ***governance*** among multiple constituencies. As the owner and lessor of the underlying land, the CLT is able to exert long-term control over the occupancy, financing, repair, improvement, and resale of all buildings owned by the land's lessees. As an organization accountable not merely to those residents who lease its lands and occupy its housing, the CLT is pushed to pursue a development agenda that serves the interests of a larger community,

[14] *Ibid*, 18.

[15] 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 either has its own membership or none at all. Several municipally sponsored CLTs, such as those in Chicago and Irvine, have also been established without memberships. In these cases, the board of the CLT is appointed by the municipality, not by a membership that lives on the CLT's land or resides within the CLT's service area.

[16] The "residents" who "control" the CLT, it should be noted, include a wider circle of people than those who reside on the CLT's lands. Unlike a housing cooperative, where only the co-op's owner-occupants are typically allowed to vote for the board and to serve on the board, residents of the neighborhood, city, or county surrounding a CLT's holdings exert as much control over a CLT's governance as resident's of the CLT's housing.

including residents of the neighborhood (or region) surrounding the CLT's holdings, tenants who hope someday to own a CLT home, and municipal officials, private lenders, and nonprofit organizations partnering with the CLT to promote homeownership, revitalize communities, and steward public (and private) resources.

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, a formula 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. Perpetual affordability is a commitment of every CLT, but the formula that defines and enforces affordability can vary greatly from one CLT to another. 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 in hot and cold sub-markets within their service area.

Perpetual Responsibility

CLT Classic. The CLT does not disappear once a building is sold to a homeowner, a co-op, or another entity. As the owner of the land underlying any number of buildings and as the owner of an option to re-purchase all buildings for a formula-determined price, the CLT has a continuing interest in what happens to these buildings – 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. As a party to the deal, the CLT remains in the relationship, even after a home has been sold to an individual household.

CLT Variations. Some CLTs provide a full menu of pre-purchase and post-purchase services, going to great lengths to prepare people for the responsibilities of homeownership and to support their homeowners in good times and bad. Other CLTs focus primarily on monitoring and enforcing the occupancy, eligibility, and affordability controls embedded in the ground lease, intervening only to prevent the loss of a building faced with foreclosure.

Expansionist Acquisition

CLT Classic. CLTs are not focused on a single project, 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 across a CLT's entire service area and designed to be indistinguishable from other housing within the same community.

CLT Variations. Every CLT has an eye toward expanding the acres and buildings that are under its stewardship, but the scale and pace of acquisition can vary widely from one CLT to another. Some CLTs have grown 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 rapidly, benefiting from private donations or public investment that enable the acquisition of larger parcels of land and the steady development of many units of housing.[17]

Flexible Development

CLT Classic. The CLT accommodates a variety of land uses, housing tenures, and building types. CLTs around the country construct (or acquire, rehabilitate, and resell) housing of many kinds: single-family houses, duplexes, condominiums, cooperatives, multi-unit apartment buildings, SROs, 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 held in trust for the benefit of the entire community is the common ingredient, linking them all.

CLT Variations. There is variability in both the projects that CLTs pursue and the roles they play in developing them. Some CLTs focus on a single type and tenure of housing, like owner-occupied houses or townhouses. Others take full advantage of the model's flexibility in undertaking an array of residential and commercial development. Most CLTs do their own development, initiating and overseeing projects with their own staff. Other CLTs leave development to nonprofit, governmental, or for-profit partners, confining their own efforts to assembling land and preserving the affordability of any buildings located upon it. Between these extremes of the CLT-as-developer and the CLT-as-steward lie a variety of roles that CLTs have embraced.

Balancing the Reasonable Concerns of Municipality and CLT: In Search of Best Practices

Municipal support always comes with conditions. Cities, counties, and towns have reasonable concerns when investing in a community land trust, including how their resources will be used, how the housing produced by the CLT will be managed, whether

[17] A 2007 survey of CLTs by the Lincoln Institute reported that overall, CLTs which have organized since 1990 have begun development and acquired land more quickly than CLTs which were organized in the 1970's and 1980's. See Yesim Sungu-Eryilmaz and Rosalind Greenstein, *A National Study of Community Land Trusts,* Cambridge, MA: Lincoln Institute of Land Policy, 2007: 25.

the CLT's beneficiaries will succeed in their first venture into homeownership, and whether the CLT itself will survive. Prompted by these concerns, municipal officials regularly require new (and old) CLTs to have a minimum capacity and to meet certain standards before receiving a municipality's resources. Additional conditions may be imposed afterwards, with most municipalities dictating the manner in which a CLT's homes must be marketed, the way in which the eligibility, occupancy, and affordability of a CLT's homes must be monitored, and the circumstances under which the municipality may intervene in the CLT's affairs should the organization fail to perform as promised.

Such concerns and conditions are hardly unique to CLTs, of course. Municipal officials impose similar requirements on nearly every recipient of governmental aid. The problem this occasionally creates for a CLT is unique, however, when requirements designed for forms of ownership, organization, and operation very different from the CLT impede the production, financing, or marketing of the CLT's resale-restricted homes.

These impediments are seldom intentional. Although there have certainly been occasions when a public official's personal bias against ground leasing, resident involvement, or resale controls has gotten in the way of doing right by the CLT, it is more often the case that the barriers and burdens imposed on CLTs by municipalities are accidental. Even the "worst practices" described in the present report are more likely to be well-intentioned blunders than maliciously imposed roadblocks.

Our working assumption, in fact, is that municipal resources are usually offered to a community land trust because local officials are already persuaded of the CLT's worth and personally committed to the CLT's success. The challenge lies in finding the most supportive and productive ways of putting these resources to work.

- The "best" practices are those that help a CLT to expand its holdings and to sustain its operations, without requiring the CLT to become something else.
- The "best" practices are those that help a CLT to preserve the affordability of its homes and the security of its homeowners, without intruding too much on the privacy and prerogatives of homeownership.
- The "best" practices are those that address a municipality's reasonable concerns while respecting the CLT's particular strengths, balancing both.

This report was prepared with both parties in mind, an audience made up of municipal officials who are funding, regulating, or taxing a CLT and local practitioners who are organizing, staffing, or governing a CLT. These are the actors with the greatest stake in seeing that municipal support does what it is supposed to do, helping not hindering a CLT's development. These are the actors with the greatest stake in getting it right.

There are, as we have found, a number of ways for a municipality to "get it right," whether supporting a CLT's start-up, a CLT's projects, or a CLT's operations. Every chapter in this report begins, therefore, with a menu of options, describing the range of methods and mechanisms being used by cities, counties, and towns in assisting, taxing, and regulating CLTs within their jurisdictions. Every chapter then identifies a few of the

most difficult and divisive issues with which municipalities and CLTs must contend in working together.

These issues arise because the interests of the parties sometimes diverge. As committed as both a municipality and a CLT may be to a shared vision of many acres of land and many units of housing held permanently in trust by an organization that is both financially viable and politically accountable, there is not always be agreement on the most effective means of making this vision a reality. When they disagree, as occasionally they will, the partners must be able to step back from the fray, acknowledge their differences, and negotiate a compromise that respects the concerns and balances the interests of both.

In the hope of facilitating such a cooperative process of negotiation and compromise, we have attempted to identify those issues most frequently the cause of disagreement between municipalities and CLTs and to clarify the competing concerns of the parties. We have also recommended what we consider to be, at least so far, the best practices for addressing those concerns. Even here, however, there are multiple ways to "get it right." There are lots of pretty good ways to support a CLT that lie in between the "best practices" and "worst practices" depicted here. These extremes merely frame the discussion, pointing out the range of programmatic possibilities a municipality may pursue in helping to create a CLT that is accountable, productive, and sustainable.

We acknowledge the risk of proclaiming any practice as "best" when the policies and programs being used to support CLTs are still unfolding and when the model itself is still evolving. Even better practices may be waiting in the wings. If CLTs are ever to be brought to scale, however, there must be a deeper understanding and wider agreement about the kinds of governmental assistance most likely to help – or to harm – a CLT. We cannot claim such a consensus yet exists. We ***can*** say there are municipal practices that seem to us – and seemed to many of the policymakers and practitioners we consulted in preparing the present report – to be especially well suited to ensuring a CLT's success. Whether they are truly the "best" ways to support a CLT is still open for debate. Ours is hardly the last word on the subject.

Seeding the Model: Municipal Support for CLT Start-ups

In the not-too-distant past, it was only ***after*** a CLT had become established that most municipalities were willing to commit significant resources toward a CLT's projects and operations. That has gradually changed. Today, many municipalities are either taking the lead in initiating a CLT themselves or becoming heavily invested and involved soon after a neighborhood's leaders have begun the process of planning a CLT. The commitment of municipal resources is coming much earlier (and more abundantly) than ever before.

A Start-up Checklist

The critical period in a CLT's start-up is the year immediately preceding incorporation and the first two years of the CLT's operation. Before the first parcel of land is acquired and before the first unit of housing is developed, there are decisions to be made and tasks to be completed that lay the foundation for the CLT's long-term success. Building a sound and sustainable organizational foundation was once exclusively the concern of individuals outside of local government who were directly involved in organizing the CLT. With the earlier participation of municipal officials in the process of planning and starting CLTs, however, and with the greater investment of municipal resources in the projects proposed by CLTs, municipalities have begun paying closer attention to the decisions and tasks that brick-by-brick build the foundation for a CLT.[18] A start-up checklist for a CLT being created from scratch would typically include the following:[19]

<u>Key decisions prior to incorporation</u>

1. ***Beneficiaries***: Who will the CLT serve?
2. ***Service area***: Where will the CLT work?
3. ***Development***: What kinds of residential and/or non-residential structures will be developed on the CLT's land – and what roles will the CLT play in the development process?
4. ***Governance***: How will the governing board be structured and selected? Will the CLT have a membership (a key feature of the "classic" CLT)? What role(s) will the CLT's membership play?
5. ***Resources***: Where will the CLT look for the funding it will need to pay for its projects and its operations?

<u>Essential tasks prior to incorporation</u>

[18] Private lenders and national intermediaries like Fannie Mae are also paying closer attention to this organizational foundation. When considering loans to a CLT, they are as likely to underwrite the organizational soundness of the CLT as the financial feasibility of the proposed project.

[19] A more detailed discussion of these decisions can be found in John Emmeus Davis, *Starting a Community Land Trust: Organizational and Operational Choices*, 2007. Available online at *<u>www.burlingtonassociates.com</u>*

1. ***Planning committee***. Assign responsibility for making key decisions about how the CLT will be structured, where it will work, who it will serve, and what it will do.
2. ***Education and organizing***. Begin educating community residents and key stakeholders about the CLT.
3. ***Market assessment***. Assess the market conditions, optimal prices, and likely demand for housing that would serve the population targeted by the CLT.
4. ***Resource assessment***. Assess the availability and sufficiency of the public (and private) resources that can be accessed by the CLT to acquire land, build housing, bring the price of housing within the financial reach of the CLT's target population, and cover the cost of the CLT's own operations.
5. ***Legal research***. Conduct legal research, as needed. In states where CLT development is non-existent – or where a proposed CLT is planning to boldly go where no CLT in that particular state has gone before (e.g., using tax increment financing for a CLT project, developing resale-restricted condominiums on leased land, converting mobile home communities into cooperative ownership on leased land, etc.) – there may be a need for legal research to determine whether the CLT can do what it proposes to do.[20]
6. ***Articles and bylaws***. Prepare the corporate documents that establish the CLT, including the articles of incorporation and bylaws for the CLT, institutionalizing the decisions made during the organizing process about how the CLT is to be structured and governed.

<u>Formative tasks after incorporation</u>

1. ***Board of directors***. Seat and orient the CLT's first board of directors.
2. ***Ground lease***. Design the ground lease and resale formula.[21]
3. ***Administrative systems***. Implement bookkeeping, accounting and reporting systems
4. ***Outreach and membership development***. Develop outreach materials (e.g., brochure, website, PowerPoint) and an outreach plan for systematically educating the larger community (neighborhood organizations, nonprofit organizations, business community, etc) about the CLT and for building the CLT's membership.
5. ***Selection policy***. Develop threshold criteria and a formal process for selecting buyers (or renters) of housing developed by the CLT.

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[20] Legal research is ***not*** required to evaluate whether a CLT can be incorporated. There are no barriers to establishing the CLT as a nonprofit corporation in any state, although some states (e.g., Delaware and Ohio) have not allowed CLTs to include "trust" in their corporate name. There are also two states, Ohio and North Carolina, where there has been an on-going legal debate about the CLT's ability to separate ownership of land and residential buildings (although in both states leased-land CLTs have operated successfully for over a decade). A more widespread legal conundrum has involved the best way for a CLT, in any given state, to add cooperatives, condominiums, or mobile home parks to the CLT's portfolio. There is enough variation in the statutes covering these specific forms of tenure from one state to another to recommend a modicum of legal research before combining the CLT with any one of them.

[21] Few CLTs draft their ground lease or design their resale formula from scratch. The template and guide used by most CLTs in the United States is the *CLT Legal Manual*, published by the Institute for Community Economics in 2002.

6. ***Homebuyer orientation***. Develop and implement CLT homebuyer orientation program.
7. ***Local attorneys***. Educate attorneys who can advise prospective CLT homebuyers on the terms and conditions of this unique model of homeownership.
8. ***Business plan***. Create a three-year plan for building the CLT's portfolio and bringing it to scale. Include, as well, a staffing plan, an operating budget, policies and procedures, and housing development goals.
9. ***Charitable status***. Apply for a 501(c)(3) designation, requesting an exemption from federal taxes as a charitable organization.[22]
10. ***Public funding***. Review existing municipal and state programs for compatibility with the CLT model. Negotiate modifications that might give the CLT access to these funding sources.
11. ***CHDO status***. Seek CHDO designation from the local Participating Jurisdiction.
12. ***Local property taxes***. Negotiate property tax treatment for resale-restricted, owner-occupied housing developed through the CLT.
13. ***Private financing***. Build relationships with private financial institutions, preparing for the mortgaging of resale-restricted, owner-occupied housing.
14. ***Initial staffing***. Develop job description(s) for the first staff and complete a hiring process.
15. ***Acquisition strategy***. Develop acquisition criteria and begin searching for the first property to be acquired by the CLT.
16. ***Sustainability***. Conduct a sustainability analysis, assessing the CLT's prospects for eventually covering the cost of its core stewardship responsibilities out of revenues generated by its own operations and portfolio.[23]

This checklist is illustrative, not exhaustive. The mix of decisions and tasks involved in starting a CLT may vary somewhat, depending on the conditions and challenges facing local organizers. Whatever the mix, however, it should be obvious that starting a CLT involves a lot of work. Somebody – or a lot of "somebodies" – must provide the leadership, contribute the time, and find the resources to get everything done that must be done to get a CLT up and running. Many of these resources can be provided – and, increasingly, ***are*** being provided – by municipal governments.

A Menu of Municipal Support

[22] Some CLTs have made a conscious decision ***not*** to seek 501(c)(3) status. Among those initiated or supported by a municipality, however, none has been founded without a 501(c)(3) tax exemption from the IRS.

[23] As long as the CLT is operating as an expansionist buyer of land and activist developer of housing (or other facilities) serving lower-income households, there will never come a point where the CLT no longer requires outside support from public and private sources for its projects and operations. The CLT's stewardship function ***can*** become self-sustaining, however, once the CLT's portfolio has reached a certain size. A "sustainability analysis" is done to determine how fast a CLT's portfolio of land and housing must grow and how large it must become in approaching the point where the CLT can generate enough revenues ***internally*** to cover the cost of monitoring the provisions of its ground lease, managing resales, preventing foreclosures, and other stewardship responsibilities.

As cities and counties have come to play a larger role – and an earlier role – in the process of establishing a CLT, they are bringing significant resources to the table. These municipal contributions range from modest participation in planning the CLT to major investments in expanding the CLT's portfolio and sustaining its operations during its formative years. Some municipalities give a little; some give a lot. The menu of possibilities is described below.

Preparing the Ground for a CLT

Municipal support for a CLT is usually rooted in three basic policy commitments, each signaling a major departure from the way that local governments have usually supported affordable housing in the past.

- ***A commitment to subsidizing homeownership***. Rather than putting most (or all) of its resources for affordable housing into subsidizing rental housing, the municipality decides to invest some of its dollars and powers in promoting homeownership for low-income and/or moderate-income households who could not buy a home without such assistance.

- ***A commitment to preserving the availability of public subsidies***. Rather than allowing its investment in affordable homeownership to be pocketed by the initial homebuyers, the municipality decides to protect the value and maintain the availability of these public resources for future generations of low- and moderate-income homebuyers.

- ***A commitment to preserving the affordability of publicly assisted homes***. Rather than recapturing its investment in affordable homeownership, the municipality decides to lock these subsidies in place, perpetuating the affordability of this publicly-assisted, owner-occupied housing for future generations of low- and moderate-income homebuyers.

Putting these policies in place does not guarantee that municipal support for a CLT will follow, of course, but it has tended to be a precondition of such support.[24] For example, in **Burlington VT**, a priority for investing public resources in perpetually affordable housing was endorsed by a Council-appointed Affordable Housing Task Force and by Burlington's Community and Economic Development Office, soon after the Burlington CLT was created, providing a justification for redirecting much of the city's funding for affordable housing toward the CLT.[25] In **Highland Park IL**, the idea for a city-

[24] Another precondition, beyond the policy commitments described above, is an abiding consensus among municipal leaders that (1) the jurisdiction has a serious housing problem and (2) the municipality has a role to play in helping to solve it. There have been several cases in recent years where municipal staff have been on the verge of backing a CLT, only to be reined in by a hesitant city council. Although driven in part by lingering doubts about an unfamiliar model of tenure, a more significant culprit has been the growing skepticism among some city councilors as to whether there is still a ***need*** for public intervention in promoting affordable housing in a softening real estate market.

[25] Community and Economic Development Office, City of Burlington. *Report and Recommendations of the Affordable Housing Task Force,* 1985-1986. See also: Community and Economic Development Office

sponsored CLT emerged out of a Housing Task Force that also endorsed the creation of a housing trust fund and enactment of inclusionary zoning to work in combination with the CLT. In **Irvine CA**, the looming loss of 4,400 units of affordable housing, created with short-term affordability controls, and the closing of a 4,700-acre military base adjacent to Irvine led the city to convene a task force to consider changes in city policy. The task force settled on a priority of preserving the affordability of whatever new units might be created in the future with municipal assistance. A housing strategy[26] was drafted which called upon the City of Irvine to develop 9,700 affordable housing units and to put most of these units under the stewardship of a municipally-sponsored CLT. Similarly, the decision of the **District of Columbia** to invest in a city-wide CLT can be traced to a Housing Strategy Task Force, established by the mayor and city council in 2006, which recommended the "formation of one or more community land trusts . . . to advance the important objective of creating 'permanent affordability' or guaranteeing that units remain affordable indefinitely."[27]

Introducing an Unfamiliar Model

There are cities where municipal staff have played the lead role in researching the CLT and then educating political leaders and the wider community about the model. In **Portland OR**, for example, the idea for a CLT originated in the Bureau of Housing and Community Development. Bureau staff arranged for CLT practitioners from other cities to visit Portland and to participate in public forums, answering questions about CLTs posed by local nonprofits and housing activists. In **Burlington VT**, three members of the city's Community and Economic Development Office attended the first national CLT conference in Voluntown, Connecticut in 1983 and, upon returning to Burlington, organized a series of public information sessions about the model. In **Chicago IL**, a senior official in the Department of Housing joined with a program officer from the MacArthur Foundation to commission a report on the CLT model. The report was followed by separate briefings for the Foundation's staff and for city officials from the Planning Department, Housing Department, the City Attorney's Office, and the Chicago Housing Authority.

Participating in the Planning Process

There are many jurisdictions where elected officials and/or municipal staff formally and actively participate, along with other stakeholders, in months of meetings where the decisions are made and the plans are laid to establish a CLT. In **Chapel Hill NC**, for example, municipal officials from the Town of Chapel Hill and from Orange County served on the advisory committee that created the CLT. In **Irvine, CA** the mayor and a city council member served on the planning committee and the initial board of directors for the CLT. Irvine's mayor was the board's first chair. In **Chicago IL**, the Commissioner of Housing was part of the advisory committee that created the CLT and now sits on the CLT's board

(1984). The Burlington Community Land Trust as a private Complement to Public Land and Housing Programs, City of Burlington.

[26] City of Irvine, CA and Irvine Redevelopment Agency, *Housing Strategy and Implementation Plan*, 2002.

[27] *Mayor's Comprehensive Housing Strategy Task Force*, District of Columbia, 2006.

of directors. In **Truckee CA**, the city government assigned a staff person to work with the committee that made the initial policy decisions for the Workforce Housing Association of Truckee Tahoe, a new regional CLT.

Staffing the Start-up

Municipal employees have often assumed the main responsibility for convening meetings and staffing the advisory committee and/or governing board of the CLT. They have also accepted, on occasion, the main responsibility for administering the CLT and acting as the CLT's de facto staff during its early years of operation.[28] In **Chicago IL**, the first executive director of the Chicago CLT is a city employee, working out of the Department of Housing. A city attorney, moreover, has provided invaluable legal advice as the CLT's first projects have gotten underway. In **Delray Beach FL**, the Community Redevelopment Agency is staffing the newly-founded Delray Beach CLT.

Contracting for Expert Assistance

A number of cities and counties have taken the lead and borne the cost of hiring outside consultants to provide technical assistance to the committee planning and/or organizing the CLT. **Burlington VT**, **Portland OR**, **Irvine CA**, **Delray Beach FL**, **Sarasota FL, Highland Park IL,** and **Chicago IL**, are all examples of cities that contracted directly with local or long-distance consultants for a wide range of CLT-related services, including advice on organizational development, ground lease issues, project feasibility, and business planning.

Providing a Start-up Grant

In several cases, a municipality has provided an upfront grant to support the process of planning and incorporating the CLT. The City Council of **Burlington VT,** for example, approved a seed grant of $200,000 in 1984, allocated out of general revenues, for the start-up of the Burlington Community Land Trust (now the Champlain Housing Trust). In 2006, the City Council of **Irvine CA**, provided an initial grant of $250,000 to fund the planning and development of a new CLT. In 2003, **Hennepin County MN** provided a $25,000 start up grant for a "CLT initiative" to fund the research and planning that went into creating the City of Lakes CLT in Minneapolis. In 2006 the Town of **Truckee, CA** entered into a $45,000 contract for services with the Workforce Housing Association of Truckee Tahoe (WHATT) to launch a new Community Land Trust Program. The Town's contract called for WHATT to develop a centralized outreach and education system, develop systems for homebuyer screening and selection, create a ground lease and related policies and systems for monitoring affordable units created under the Town's inclusionary housing ordinance.

[28] This has typically been a temporary arrangement, lasting only until the CLT has established its own administrative systems and hired its own staff. In some cases, however, municipal staffing of the CLT may be permanent. In Chicago, for example, the Department of Housing is committed for the foreseeable future to administering and staffing a city-wide CLT that has been established as a separate, nonprofit corporation.

Re-tooling Existing Programs

Although in some cities the resources directed to a start-up CLT have come from new programs like inclusionary zoning or new sources of funding like a housing trust fund, most cities have turned to existing programs and sources to support their fledgling CLTs. This has sometimes meant that the new CLT must amend its approach to fit within the regulations of existing municipal programs, some of which may be ill-suited to a model of permanently affordable, owner-occupied housing (see the "worst practices" discussion below). There are other cities, by contrast, where an earnest effort is made at an early stage in the process of planning and organizing the CLT to critically examine the existing array of municipally-administered housing and community development programs for their compatibility with the CLT. Where necessary, modifications are made in the priorities and procedures of these programs to ensure that the CLT is able to access them and utilize them without damaging or undermining its effectiveness. In **Chicago IL**, for example, municipal staff in the Department of Housing reexamined and revised existing housing assistance programs to ensure access by the Chicago CLT. City staff also met with the Cook County tax assessor and secured a commitment to tax CLT homes on the basis of their permanently restricted resale value. Both **Portland OR** and **Chapel Hill NC** amended their homebuyer assistance programs so that their subsidies could be permanently retained in a CLT's homes, instead of invested as loans to individual homebuyers that are recaptured at resale. The inclusionary zoning ordinance in **Madison WI** was amended so that inclusionary units that become part of the portfolio of the Madison Area CLT would not be subject to the city's standard purchase option, as long as the MACLT resells the homes for an affordable price to income-eligible households.

Committing Multi-year Operational Funding

A few municipalities have gone far beyond a one-time grant for a CLT's start-up in making a commitment to covering a major part of the CLT's operating costs for its first few years of operation. **Sarasota County FL**, for example, pledged annual operating grants of $250,000 for the first four years to enable the Community Housing Trust of Sarasota County to build organizational capacity, develop a homeownership program, and get its first projects started. In **Chicago IL**, the city (with a grant from the MacArthur Foundation) is covering the cost of staffing the new CLT and will cover all overhead and administrative costs for the first few years of the CLT's operation.

Committing Project Funding and/or Municipal Property

As part of the inducement for starting a CLT – and as a means of quickly establishing the CLT's credibility – some municipalities have made an early commitment to building the CLT's portfolio. These commitments have come in the form of equity investments or low-interest loans for a CLT's projects, publicly-owned lands that will be conveyed to the CLT, or publicly-owned or publicly-mandated housing units that will be conveyed to the CLT once it is established. In **Delray Beach FL,** the city's Community Redevelopment Agency pledged to convey vacant parcels of land already owned by the CRA. **Irvine, CA** plans to place into the CLT's portfolio most of the inclusionary housing units that are

constructed in future years. In addition, the City's redevelopment agency is planning to provide the CLT with land donations and redevelopment funding to finance project development. Similarly, in **Syracuse NY** and **Albuquerque NM**, community land trusts were brought into being, in part, because of the prospect of large parcels of city-owned land being transferred for redevelopment to the CLT.[29] More recently, the city council of **Washington, DC** committed $10 million in public funds to help subsidize the first 1000 units of resale-restricted, owner-occupied housing being developed by City First Homes, a District-wide CLT that plans eventually to develop 10,000 units of affordable housing.[30]

Balancing the Concerns of Municipality and CLT

A municipality's leaders are willing to assist a CLT – and a CLT's organizers are willing to accept such assistance – because both believe their interests will be served by working together to get the CLT off the ground. During the process of planning and starting a CLT, however, the interests of the parties sometimes diverge. There are issues where those who speak for the municipality and those who speak for the CLT can find themselves at odds. The two most divisive issues that commonly appear during the start-up phase are the following:

- How extensively (and how early) should residents of the CLT's intended service area be involved in planning, designing, and governing the CLT?
- How equitably are the rights of the homeowner and the landowner to be allocated in designing the CLT's ground lease?

Community Participation

Among the many tasks involved in starting a CLT, none is more important than systematically introducing the model to a wide array of constituencies in order to win their informed support. The municipal agencies to whom the CLT must look for project funding, regulatory approvals, and equitable taxation are a high priority for any such campaign of outreach, education, and organizing. Equally important are several constituencies outside local government, especially those individuals who call the CLT's service area their home and institutions serving the same population as the CLT. Experience has shown that these nongovernmental constituencies must be intimately involved in the process of planning, designing, and governing a CLT if this unusual model of affordable housing is to have any chance of being accepted and supported by the larger community. The municipality, however, may be resistant to working with neighborhood activists with

[29] In **Syracuse NY**, Time of Jubilee Inc. and the city's Community Development Department partnered in developing a 12.5-acre parcel of vacant land in the southwest neighborhood. In **Albuquerque NM**, the Sawmill CDC converted itself into a CLT to take advantage of the opportunity to redevelop 27 acres of vacant land near Old Town in the heart of the city.

[30] This $10 million grant to City First Homes will be bundled with $65 million in private investment. The blueprint for this 1000-unit pilot program is the "District of Columbia Workforce Housing Land Trust Design and Implementation Plan." Drafted by the Mayor's office in consultation with City First Enterprises, this Plan was approved by the city council on August 8, 2006.

a history of criticizing city hall or may simply be reluctant to relinquish control over a fledgling organization to which the municipality is planning to make a major commitment of money or land.

Municipal Concern: A municipality wants the process of planning a CLT – and the organization that results from that process – to reflect the municipality's policies and priorities.

CLT Concern: A CLT is committed to the extensive participation of community residents, CLT leaseholders, and "public-interest representatives" in its corporate membership, on its governing board, and in the process of planning the CLT.

Worst Practice: Participation Deferred – or Eliminated

Whenever the start-up of a CLT is dependent on a municipality's resources and dominated by a municipality's priorities, there is a danger that constituencies outside of local government will not be invited into the planning process until ***after*** the decisions have been made that lay the foundation for the new CLT. Even worse, the preeminence of city government in planning a CLT may come at the price of the model's more democratic components, where leaseholders no longer have a place on the board and where accountability to city hall replaces accountability to the local community.

Best Practice: Early and Ongoing Participation of Community and Municipality

The CLT, in its "classic" configuration, combines an innovative approach to the ***ownership*** of real estate, the ***operation*** of affordably-priced housing to preserve its affordability, and the ***organization*** of the CLT itself. Municipalities that are drawn to the CLT because of ownership and operation, sometimes place a lower priority on the model's distinctive organizational features. Most public officials eventually recognize, however, that the active participation of community residents and CLT homeowners can be a precious asset, helping the CLT to mitigate opposition to its projects, build a market for its homes, and win acceptance for an unconventional model of tenure among funders, lenders, and the community at large. The best way for a municipality to support a CLT is to weave participation and accountability into its organizational fabric, ensuring CLT's continuing connection to the community it serves.

Allocation of Rights Between Homeowner and Landowner

The "model" ground lease used by most CLTs in the United States has been refined over a thirty-year period of trial and error.[31] It is a two-party contract that is written in favor of neither party. The rights and responsibilities of the landowner (the CLT) are limited and balanced against the rights and responsibilities of the lessee (the homeowner). A

[31] A hard copy of this model lease, along with an excellent commentary explicating every article, can be found in *The Community Land Trust Legal Manual*, published by the Institute for Community Economics in 2002. Copies can be purchased from Equity Trust, P.O. Box 746, Turners Falls, MA 01376 (413-863-9038). Electronic copies of the model lease and the commentary can be downloaded free of charge from the National CLT Network (www.cltnetwork.org) or the *CLT Resource Center* (www.burlingtonassociates.com).

municipality's desire to protect its investment in the CLT, however, can sometimes threaten this delicate balance.

Municipal Concern: A municipality wants any recipient of its subsidies to have sufficient powers to impose conditions, enforce compliance, and cure defaults in the housing produced with municipal support.

CLT Concern: A CLT wants to protect the integrity of the homeownership "experience" being offered to prospective homebuyers, ensuring that a homeowner's privacy and independence are not compromised by unnecessary oversight and interference by the landowner or the municipality.

Worst Practice: Rewriting the Ground Lease in Favor of the Landowner

The temptation of some attorneys, when asked to review the "model" ground lease that has become standard practice for CLTs across the country, is to begin re-writing it. There is something about the lease's carefully wrought balance between the parties, equitably protecting the rights of homeowner and landowner alike, that sends some attorneys running for a red pencil as soon as a client asks them to "read over" the proposed lease. Many city attorneys, in particular, have been inclined to rewrite the lease to grant the landowner more sweeping powers of inspection, approval, and enforcement than are granted a CLT under the model lease. This can create enormous headaches for the CLT in marketing, financing, and administering its resale-restricted homes.[32] A few city attorneys have even tried to write their cities into the ground lease, giving a municipal agency the right to approve the financing, subletting, or improvement of buildings located on the CLT's land – or the right to approve the transfer of the CLT's land. This is the wrong vehicle for asserting the municipality's interests, since the city is not a party to the ground lease.

Best Practice: Maintaining the Model Lease's Equitable Balance of Interests

The model CLT ground lease has been carefully developed, tested, and refined to grant the CLT all of the rights and powers the CLT will need to prevent absentee ownership, to promote good maintenance, to cure defaults, to prevent foreclosures, and to preserve affordability in the owner-occupied housing under the CLT's stewardship. At the same time, the model lease is designed to respect the privacy and autonomy of the CLT's leaseholders, intruding as little a possible on the experience of homeownership. Just as important, the model lease has created a degree of standardization among major lenders and national intermediaries like Fannie Mae in the mortgage underwriting of CLT homes on leased land. A municipality has many options for protecting its investment in a CLT's land and housing that do not require completely overhauling a model lease that has proven its worth over a span of many years. This does not mean to suggest that the model lease must never be altered in any way. With or without municipal involvement,

[32] Significantly altering the lessee's rights in the CLT model ground lease can make it harder for a CLT's homebuyers to obtain mortgage financing. The model lease has been designed and revised over the years in consultation with both private lenders and secondary market institutions to safeguard their interests and to standardize key lease provisions, eliminating the need for a lengthy review by lenders of each new lease.

CLTs make dozens of refinements in the model lease in the process of adapting it to local priorities and needs. Key decisions are made about the precise terms and conditions for regulating occupancy, subletting, inspections, improvements, eligibility, and the pricing and resale of CLT homes. The "best" practice in making these refinements is not to leave the model lease entirely alone, but to respect the lease's equitable relationship between landowner and homeowner.

Building the Portfolio: Municipal Support for CLT Projects

To be successful, a CLT must be able to acquire, develop, and/or rehabilitate housing which can then be sold for prices affordable to households earning below a targeted level of income. Municipalities have supported CLTs in building a portfolio of affordably-priced, resale-restricted, owner-occupied housing in a variety of ways, including donations of publicly-owned lands and buildings, grants and loans for land acquisition or project development, the dedication of publicly-mandated inclusionary housing, and regulatory relief from municipal requirements and fees that would otherwise add to the cost of developing new housing.

Structuring Homeownership Subsidies

Many municipalities have long operated homeownership assistance programs that provide assistance directly to first-time homebuyers. This approach usually involves offering a lower-income homebuyer either an outright grant or a no-interest or deferred-interest loan (typically structured as a second mortgage) so that her monthly mortgage payments are reduced to the point where she can afford to purchase a market-priced home. The CLT model is built around a very different approach, one that takes the same public subsidy (typically given to the CLT, rather than to the homebuyer) and uses that subsidy to reduce the ***purchase price*** of the home to an affordable level.

Table 1, presented below, compares these two approaches. In the first example, the homebuyer receives a $100,000 loan from local government and uses it to buy a market-priced house. In the second example, the $100,000 subsidy is invested permanently through the CLT, allowing the CLT to sell the same home for a lower price. Notice that in one case the homebuyer pays $300,000 for the house while in the other the homebuyer pays only $200,000, but in both cases they bear the same monthly costs for the same house.

Table 1

Comparison of Alternative Subsidy Strategies

	Affordable Payment	Affordable Price
Market Cost	$300,000	$300,000
Development Subsidy	$0	$100,000
Sales Price to Homeowner	$300,000	$200,000
Second Loan to Homeowner	$100,000	$0
Downpayment	$10,000	$10,000
First Mortgage	$190,000	$190,000
Monthly Mortgage Payment*	*$1,140*	*$1,140*

* assuming 6% interest on a 30 year loan

Over the long term, however, the effect of these two approaches is not the same. One approach temporarily creates **affordable payments,** while the other permanently creates **affordable housing**. A loan to a lower-income homeowner makes the home initially affordable, but it does nothing to preserve the affordability of the assisted housing.[33]

In real estate markets where average housing prices rise faster than average household incomes, the level of subsidy that every successive homebuyer will need in order to afford market-priced housing will steadily increase (see Figure 1). Even when a municipal program requires homeowners to repay most or even all of the public subsidy that was provided to them when they resell their assisted homes, an additional subsidy will usually be needed to fill an affordability gap which has continued to widen during the time the initial buyer occupied the home (see Figure 2). The next generation of lower-income homebuyers will likely need a far greater subsidy than was required to boost the first generation into homeownership.

The alternative strategy, employed by a growing number of municipalities, is to make a permanent public investment in creating a stock of permanently affordable, owner-occupied housing (see Figure 3). When a municipality invests its available subsidies in a model of resale-restricted housing like the CLT, the nonprofit organization uses these funds to acquire land and, perhaps, to cover other costs of housing development. As a result, the CLT is able to sell its homes for a price that lower-income households can afford without the need for a second loan or other special financing.[34] The price itself is affordable. Later, when the initial homebuyer decides to move, she is required by the terms of the ground lease to resell her subsidized home for a below-market price that another lower-income homebuyer can afford. The CLT controls the price of housing across multiple resales, keeping its homes affordable for many years without the need for an additional infusion of public capital.[35]

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[33] A fuller description of the debate between advocates for affordable prices versus advocates for affordable payments can be found in McKenzie, T. (2007). "The Case for Plan B." Shelterforce **24**(3)..

[34] This is an ideal case, however. There are many CLTs, especially those that are operating in high-priced real estate markets and serving very low-income households, where the subsidy received by the CLT to acquire land and to reduce the price of a single-family housing is still insufficient to bring homeownership within the financial reach of the CLT's target population. These CLTs are forced to ***combine*** whatever subsidies the CLT has received for land acquisition and project development with whatever downpayment grants or low-interest mortgages that might be available from public or private sources in the form of direct assistance to prospective buyers of CLT homes.

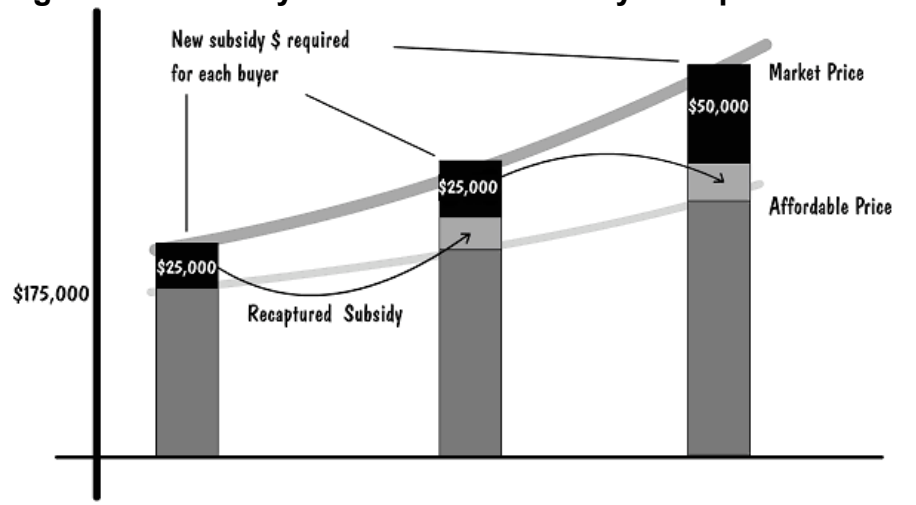
[35] As we note later, however, a number of other factors can erode the future affordability of CLT homes. Rising costs for insurance or utilities, rising property taxes, and/or rising mortgage interest rates can drive up the monthly cost of a CLT home, even when its resale price is restricted. In these cases, as we later argue in Chapter 7, a CLT cannot ***guarantee*** affordability. An additional subsidy from the municipality may sometimes be needed.

Figure 1: Affordability Gap: Growing Subsidy Needed



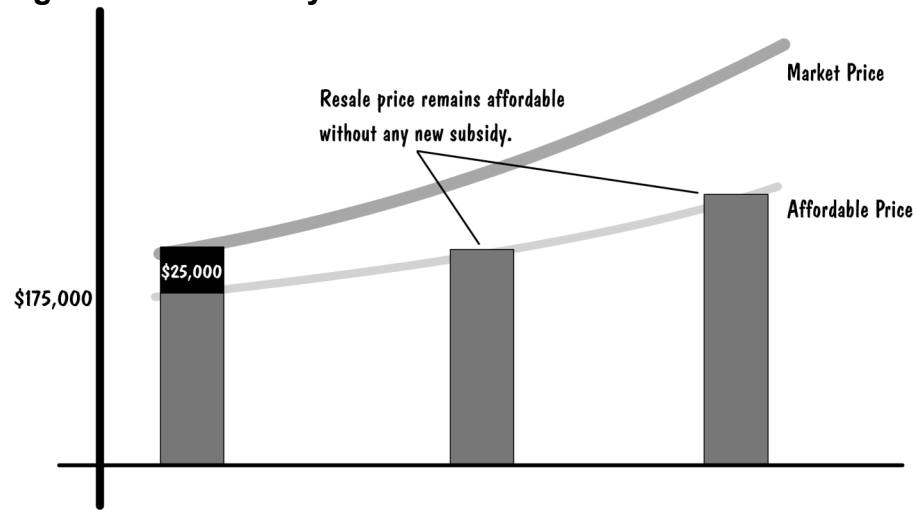
If housing prices rise faster than household incomes, the gap between prices and incomes widens, requiring an ever-larger subsidy to make a home affordable. Programs providing loans or grants to homebuyers must constantly increase the level of subsidy to keep pace with this growing affordability gap.

Figure 2: Homebuyer Loans with Subsidy Recapture



Even when loan programs recapture the original subsidy and reinvest it in new loans for new lower-income buyers, an additional subsidy will be needed to help subsequent generations of homebuyers, if the gap between prices and incomes continues to grow.

Figure 3: Community Land Trust



A one-time investment in a CLT lowers a home's initial sales price to an affordable level and then limits the rate at which the home's resale price is allowed to rise over time, increasing the stock of permanently affordable housing.

A Menu of Municipal Support for Homeowner Projects

There are several methods through which local governments are making it possible for a CLT to close the affordability gap and to offer homes for sale at below-market prices that lower-income households can afford. The most common types of development assistance presently being provided by municipalities are described below.

Municipally-owned Lands and Buildings

Municipalities have sometimes subsidized the development of CLT projects by reaching into their own inventory of lands and buildings, either donating them to a CLT or selling them to the CLT at a heavily-discounted, bargain-basement price. These properties have included "surplus" lands originally acquired by a city in anticipation of highway extensions or school expansions that never happened, as well as decommissioned airports, firehouses, and other public facilities that have outlived their usefulness. Municipalities have also conveyed to a CLT residential properties acquired by the city through tax foreclosure or blighted properties purchased by a city for redevelopment.

The City of **Syracuse NY**, for example, deeded 12.5 acres of vacant, municipally-owned land to Jubilee Homes, a nonprofit developer that was jointly controlled by the City and a local CLT, Time of Jubilee, Inc. When each single-family house constructed on the site by Jubilee Homes was sold to a low-income family, the underlying land was conveyed to the CLT.

A few other examples.[36] In **Delray Beach FL**, in-fill housing is being developed on parcels of land previously owned by the Delray Beach Community Redevelopment Authority and conveyed at a discounted price to the Delray Beach Community Land Trust. In **Cleveland OH**, the Cuyahoga CLT has received tax-foreclosed parcels of land from the City, on which CCLT has built new houses. The Portland CLT, in **Portland OR**, has received land and buildings from the Portland Development Commission, as well as tax-foreclosed land from **Multnomah County.**[37] In **Burlington VT**, the City donated a decommissioned firehouse to the Champlain Housing Trust. The building was converted into temporary housing for homeless families. The **City of Boston** has donated roughly 30 acres of previously blighted and abandoned property to Dudley Neighbors, Inc., a CLT affiliated with the Dudley Street Neighborhood Initiative. This land donation al-

[36] Particular cities, towns, or counties are mentioned in this chapter – and in other chapters – to illustrate different types of assistance being offered to CLTs. No attempt is made, in citing such examples, to be exhaustive. When one or more municipal programs are listed, we do not mean to suggest these to be the only places where these programs exist.

[37] **Multnomah County** transfers tax-foreclosed properties for the cost of the unpaid taxes through a competitive process that awards substantial points for permanent affordability. This has been an inducement to developers of affordable housing to partner with PCLT in their applications to the county. Developers acquire tax-foreclosed land from the county, build affordably-priced, resale-restricted homes, and then transfer the land to the PCLT.

lowed the development of 155 units of affordable housing, accompanied by the rehabilitation of a commercial building and the provision of public open spaces.[38]

Loans and Grants to the CLT

Many jurisdictions have provided cash subsidies directly to a CLT to lower the purchase price of a single-family house or condominium. The amount of the subsidy, combined with subsidies from other sources, if they are available, should be equal to the affordability gap, ensuring that CLT homes can be sold to the targeted income group at an affordable price. The amount of the subsidy may equal the cost of the land. Closing the affordability gap in many high-priced markets, however, often requires a subsidy that covers not only the CLT's cost of acquiring the land, but part of the homeowner's cost of acquiring the house or condominium.

Sometimes municipal project subsidies are structured as grants; at other times, as deferred and eventually forgivable loans to the CLT.[39] In either case, the municipality will generally not expect the funds to be repaid unless the CLT runs into problems with the project. Development loans from local government agencies, are generally interest free, require no monthly payments, and are forgiven if the CLT successfully completes and monitors the project for a specified period of years. In many ways, these development loans function exactly like grants. The primary difference is that, in the event that the CLT were to fail to comply with the conditions of its loan agreement, a municipality with a loan rather than a grant may have more options for enforcement. However, because it is recorded on title, the loan can complicate the homebuyer financing and require significantly more up front legal work to implement.[40]

Minneapolis MN and **Lawrence KS,** for example, provide interest-free, deferred loans with a 30-year term to the City of Lakes CLT and to the Lawrence Community Land and Housing Trust, respectively. At maturity, each loan is forgiven in its entirety, provided the performance standards set by the municipality are met. The contract language contained in its Promissory Notes used by the City of Minneapolis, when making such loans to the City of Lakes CLT, reads as follows: "*Maker shall not be required to make any payments of the Principal on this Note so long as Maker fully complies with the terms and conditions set forth in the Agreement for thirty (30) years from the date of the Agreement (the "Maturity Date"), after which time the entire sum will be forgiven assuming such full compliance. Holder shall charge no interest on the original or reduced Principal."* These loans are used by the City of Lakes CLT and the Lawrence Community Land and Housing Trust to reduce the purchase price of resale-restricted homes being sold to first-time homebuyers.

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[38] The **City of Boston** also assisted DNI in its efforts to assemble fragmented parcels of land into contiguous sites large enough for economical development by conveying to DNI the municipal power of eminent domain. See Medoff, P. and H. Sklar (1994). Streets of Hope: The Fall and Rise of an Urban Neighborhood. Boston, MA, South End Press.

[39] The advantages and disadvantages of loans and grants are discussed in more detail in Chapter 7, *Planning for the Worst: Municipal Contingencies for CLT Failures*.

[40] These options and issues for imposing regulating the CLT's performance and for dealing with homeowner defaults or CLT failures are discussed in later chapters.

Many other CLTs report receiving grants, no-interest loans, or low-interest loans from their local jurisdictions to reduce the purchase price of houses or condominiums, including CLTs in **Albuquerque NM, Burlington VT**, **Highland Park IL, Lawrence KS, Orange County NC, Portland OR,** and the **District of Columbia**.[41] A common source of these grants and loans to CLTs has been the pass-through of federal funds from HOME and CDBG, although municipalities have also used proceeds from their own housing trust funds and, in one case, assets contained in a municipal pension fund.[42]

Either a loan or a grant will be governed by a legal document that clearly states the eligible uses of the subsidy funds and this grant or loan agreement will often describe specific development standards which must be met, hiring and wage requirements, initial affordability requirements, and other conditions such as fair housing requirements. Additionally, when providing project support to a CLT, a municipality often requires the organization to make a long-term commitment to monitoring and enforcing provisions in its own ground lease regarding the owner occupancy, maintenance, and affordability of the home.[43]

Inclusionary Housing

A growing number of municipalities that require private developers to include an affordable housing component in newly constructed market-rate developments are choosing to assign long-term responsibility for managing the resale and preserving the affordability of these units to a local CLT. The CLT becomes the long-term steward of these housing resources that a municipality has extracted from developers who come to the municipality seeking approval for their projects.

CLTs can play important roles in enhancing both the effectiveness and longevity of an inclusionary housing program. Market-rate developers, often unfamiliar with affordable housing restrictions and requirements, are eager to identify means of meeting long-term affordability expectations without being directly involved with constant monitoring and

[41] Project support for the Sawmill CLT in **Albuquerque NM** straddles the line between the donation of municipally owned land and the granting of municipally controlled funds. When a 27-acre parcel of industrial land came up for sale in the Sawmill neighborhood, the city purchased it at the urging of community activists. The Sawmill CDC converted itself into a CLT for the purpose of receiving this land, redeveloping it, and preserving the affordability of the housing constructed upon it. The City of Albuquerque was prevented by New Mexico law from giving or selling any land for less than its market value, however. To get around this statutory prohibition, the Sawmill CLT has been given a series of CDBG grants equal to the full market value of each section of the 27-acre parcel that the Sawmill CLT has purchased from the City in a phased redevelopment of the site.

[42] Two cities where a CLT has received regular support from a municipally-administered housing trust fund are **Boston MA** and **Burlington VT**. Another example is the Housing Production Trust Fund of the **District of Columbia** which has committed a $4 million grant to the Workforce Housing Land Trust to assist in developing the CLT's first resale-restricted, owner-occupied housing for families earning less than 80% of AMI. The only example to date of pension fund investment in a CLT is a pair of $1 million loans made to the Champlain Housing Trust in **Burlington VT** by the Burlington Employee Retirement System.

[43] Such CLT-specific performance standards are discussed in more detail later on. See the chapter entitled *Regulating the Program: Municipal Oversight of CLT Activities*.

reporting. A CLT is in a perfect position to assume such roles as it fulfills these responsibilities for other units in its portfolio. A CLT can:

- Market homes to eligible buyers
- Educate potential buyers
- Screen buyers for eligibility
- Identify financing that is consistent with affordability goals
- Manage the initial sale
- Monitor owner occupancy
- Manage later resales
- Report annual on affordability to the jurisdiction

The opportunity to turn over these responsibilities to a CLT can be attractive to for-profit developers of market-rate housing who may have little experience trying to sell resale-restricted units to lower-income homebuyers. Encouraging stewardship by a CLT is in a municipality's interest, moreover, because many for-profit development companies are dissolved after a project's completion. No corporate entity remains which can be forced by the municipality to perform long-term monitoring and management of the inclusionary units.

In most cases, developers build the units themselves, turning them over to the CLT for sale to income-eligible buyers once the homes are finished. The City of **Petaluma CA**, for example, has encouraged developers of several new subdivisions to meet their city-mandated inclusionary requirement by conveying homes to the Housing Land Trust of Sonoma County upon completion. These private developers enter into an agreement which requires them to sell the completed homes to buyers selected by the CLT and simultaneously donate the land under these homes to the land trust. Similarly, in **Irvine CA,** developers have been encouraged to meet their inclusionary requirement by donating land to the CLT. The CLT then proceeds to develop affordable housing on the donated land. In other cities, like **Burlington VT**, **Boulder CO,** and **Chicago IL** where condominiums make up most of the jurisdiction's inclusionary housing, local CLTs seldom get the land beneath privately-developed, multi-unit projects. They get, instead, the first right to purchase a minor percentage of the developer's newly-constructed condominiums for a below-market price required by municipal ordinance. The CLT then sells each condominium to an income-eligible household, subject to an affordability covenant that contains exactly the same restrictions on use and resale as those contained in the CLT's ground lease.[44]

When a municipality requires a developer to donate land or to sell affordably-priced houses or condominiums to a CLT, the municipality expects the CLT to perform certain responsibilities to protect the occupancy, eligibility, and affordability of any units that

[44].The Champlain Housing Trust has also received several units from private developers as a result of Burlington's Housing Replacement Ordinance. Under this ordinance, any developer who proposes to eliminate housing through demolition or conversion must replace that housing on a unit-for-unit basis. The developer may provide these replacement units directly or may pay another party – such as CHT – to meet this obligation on the developer's behalf.

result. **Petaluma CA**, for example, enters into a three party agreement signed by the City, the private developer, and the Housing Land Trust of Sonoma County. The agreement requires the developer to donate land to the CLT, but also requires the CLT to develop and to market homes to income-eligible households and to manage future resales. The agreement also spells out rights for the developer in the event that the CLT is unable to identify eligible buyers within a reasonable period of time.

A City-CLT Partnership for Inclusionary Housing:

When the Centex Corporation, one of the largest private homebuilders in the country, proposed a 200-home townhouse development in Chapel Hill, NC, the Town of Chapel Hill required Centex to make 15% of the proposed units available at affordable prices. Although Chapel Hill has not enacted an inclusionary zoning ordinance, the town strongly requested an affordable component as part of the proposed project and, additionally, encouraged Centex to work with the Orange Community Housing and Land Trust to maintain the permanent affordability of these homes. Centex agreed to the town's "suggestions" and agreed to sell 30 units to OCHLT at a below-market price.

OCHLT agreed to market the units during the construction period and to buy them from Centrex only after a qualified buyer had been identified and had obtained mortgage financing. The developer paid a $2,500-3,000 fee to OCHLT for marketing and selling each of the 30 affordable units. The project's market-rate units were sized at approximately 2000 square feet, with prices ranging from $230,000 to $275,000. OCHLT worked closely with Centex to design somewhat smaller high-quality units which could be sold by OCHLT for $90,000 to $105,000.

Robert Dowling, OCHLT's Executive Director, describes the partnership with Centex as "fairly smooth." He noted, however, that there were a few bumps along the way and that initial phases were "stop and start." There was considerable negotiation between OCHLT and Centex around both the unit mix and unit pricing: Centex wanted large units, while the community land trust wanted smaller, lower-priced units. There were compromises between the partners on both issues.

OCHLT has engaged in similar town-brokered partnerships with other private developers. Dowling believes this to be a workable and effective strategy for producing affordable housing. The private developer brings experience and capacity in producing the units, while the Land Trust is best-suited to the tasks of marketing the units to income-qualified buyers and maintaining the affordability of these units over time. In the Centex project, Dowling notes that a whole new community was created. Families earning approximately $30,000-$40,000 per year were able to purchase townhouses that would have otherwise been entirely out of their reach. Dowling is quick to point out that the partnership between Centex and OCHLT would never have occurred without the town's involvement: Chapel Hill pushed for affordability and then nudged the developer toward OCHLT.

Regulatory Concessions

Some municipalities have supported the development of CLT homes through regulatory concessions not offered to projects containing only market-rate housing. Such regulatory relief has taken many forms: a reduction or waiver of application fees or impact fees; a waiver or relaxation of zoning requirements like parking or lot coverage; or an allowance for greater density. Since it may allow a substantial reduction in the cost of producing affordable housing, regulatory relief should be viewed as another form of municipal subsidy. The value created through regulatory relief, just as the value created through cash subsidies from the municipality, should be locked into the property and preserved over time.

Most policymakers and practitioners interviewed for this report indicated that, if their municipality provides any sort of regulatory relief for the development of affordable housing, it is made available to all developers. It is not reserved for a CLT alone. Some jurisdictions offer regulatory relief or regulatory incentives, however, only to developers who can promise lasting affordability for any units assisted in this way. In these cases, CLTs enjoy a competitive advantage. **Burlington VT**, for example, offers a reduction– or outright waiver – of impact fees for newly constructed homes with durable affordability controls. The more affordable the home and the longer the period of affordability, the greater the reduction in impact fees. **Bellingham WA** offers a 50% density bonus to developers who "can demonstrate the ability to employ a mechanism to retain all of the units as permanently affordable to income-qualified buyers," defined as households earning below 80% of the Area Median Income. Additional adjustments to zoning requirements for minimum lot size, street frontage, setbacks, parking, and usable open space may be granted. Further, the ordinance indicates that the applicant must maintain continued ownership of the land, with the owner of the residences leasing the land from the landowner. Recipients of a density bonus under this ordinance must submit annual reports to the Bellingham City Council, including information on the total number of units in the project, the number and purchase price of any units which changed ownership during the previous year, and the performance of the project's sponsor in ensuring that all units are sold and resold to income eligible households.

The Bellingham ordinance does not specifically identify the Kulshan Community Land Trust, but KCLT is one of only two organizations in the city that can currently meet the municipality's requirements for maintaining permanently affordable homeownership. Because of this ordinance, the KCLT has so far been able to develop 14 resale-restricted homeownership units on a parcel which was originally zoned for 9 homes.

There are two cases in Oregon, however, where regulatory relief ***was*** tailored specifically to a CLT. Oregon law requires a Declaration of Covenants, Conditions and Restrictions (CCR) and a homeowners' association (HOA) in all subdivisions where lots are owned

by more than one person. City planners and municipal attorneys for the **City of Ashland** and for **Clackamas County** were willing to waive the CCR and HOA requirement for subdivisions developed by local CLTs – regulatory relief that has been hard to get in many other states, including California. According to the attorney who represented both of these Oregon CLTs, "we had grounds for our request, since we pointed out that a single entity would own all of the land. However, in waiving their local land use regulations, they also were convinced that the CLT's mission, organization, governance, and land lease provided equivalent or greater protections for the homeowners."[45]

Balancing the Concerns of Municipality and CLT

There are many times when those who are offering municipal assistance for the development of a CLT's projects and those who are seeking such assistance disagree over the best way to put these resources to work. These disagreements are most commonly provoked by the following issues:

- Does a municipality support – or undermine – a CLT by providing loans directly to the buyers of CLT homes?
- Does the municipality work constructively with the CLT and with private developers when the CLT is asked to act as the steward for affordable housing created through municipal mandates like inclusionary zoning?
- Does a municipality need to alter its existing housing assistance programs in order for them to work compatibly and effectively with the CLT's unique approach to homeownership?

Loans to Homebuyers

Many jurisdictions operate homebuyer loan programs which have been developed and refined over many years. Sometimes a local government, recognizing the need for a CLT to protect long-term affordability but reluctant to alter an existing program, will try to combine the two approaches. They ask the CLT to hold the land and impose resale price restrictions but instead of (or sometimes in addition to) subsidizing the CLT, they hope to continue to provide subsidy in the form of homebuyer loans. While this combination has been made to work in some communities, it is important for policymakers to understand that CLTs represent a very different approach from homebuyer loan programs. CLTs require a ***permanent*** investment of subsidy funds while most loan programs involve only temporary investment in exchange for temporary affordability.

> Municipal Concern: A municipality with a long history of making homebuyer loans may be unwilling – or unable – to re-tool its existing programs to loan (or to grant) such funds directly to a CLT.

[45] Private correspondence, Tad Everhart to John E. Davis, December 5, 2007.

CLT Concern: A CLT can only preserve the long-term affordability of housing subsidized by a municipality if the municipal subsidy remains in the housing, reducing the price for the next low-income homebuyer.

Worst Practice: Removable Subsidies Offered Directly to Initial Homebuyers

If municipal subsidies that are offered to the initial buyer of a CLT home are either removed by the homeowner at resale or repaid to the municipality, these funds will not be available to subsequent buyers – unless the municipality is committed to reinvesting repaid loans in the same homes. Even though the CLT restricts the rate at which the price increases, without access to the municipal loan, subsequent buyers of these CLT homes will need to borrow more on their first mortgage, increasing their monthly payments. Generally, this means that future buyers will need to have higher incomes to afford the same home or the CLT will have to find additional subsidies to replace the repaid loan every time the home resells. For example, a home that is made initially affordable to a household at 70% of AMI because of a subsidized loan to the first buyer, might require a future buyer without such a loan to earn 90% of Area Median Income or more. This loss of affordability creates a serious problem for a CLT committed to maintaining the affordability of its homes for families earning under 80% of AMI. A CLT cannot maintain the affordability of its housing if local government takes its money out of the project.

Better Practice: Assumable Loans for Permanent Affordability

When a municipality insists on providing loans directly to a CLT's homebuyers, these loans must be assumable by all future income qualified buyers. By making its homeownership loans assumable by subsequent buyers of a CLT's resale-restricted homes, the municipality ensures that its funds will be recycled within the same housing stock, enabling the CLT to maintain affordability on an ongoing basis. The City of **Albuquerque NM,** for example, provides grants to the Sawmill CLT that are equal to the cost of the land underlying the CLT's homes and then offers interest-free, permanently deferred-payment loans to the buyers of these homes, loans that are assumable by future homebuyers earning less than 80% of AMI. Similarly, the Northern Communities CLT, in **Duluth MN** has developed most of its resale-restricted, owner-occupied housing using assumable loans that are offered to the homeowner, not to the CLT.

Best Practice: Permanent Investment in the Community Land Trust

It is worth noticing, however, that loans to homeowners which are assumable by future buyers require a permanent commitment of subsidy funds very much like a deferred loan to the CLT. Subsidy funds are permanently tied to an affordable unit with no real expectation of repayment. Unlike a loan or grant to the CLT, these loans have to be rolled over at each resale, involving significant legal work and recording fees with each sale. And in jurisdictions where CLT homes are taxed on the basis of the below-market price for which these homes are sold and resold, a CLT's homeowners may pay additional property taxes when the municipality's investment is structured as an assumable loan to the

buyer rather than as a grant or loan conveyed directly to the CLT. It is likely that over the long-term these loans will be much more difficult and costly for the municipality to administer. The best practice, therefore, is simply to invest municipal subsidies permanently in the project through the CLT. A grant to the CLT or a deferred-payment loan secured by the CLT's interest in the land allows the CLT to sell the home at a below-market price which is affordable for one generation of homeowners after another without additional investment by the municipality.[46] A number of municipalities have revised the regulations for their existing homebuyer loan programs, therefore, to allow the program to make deferred payment, forgivable loans directly to the CLT instead of loaning these funds to individual homebuyers.

Supporting the CLT as the Steward for Inclusionary Housing

Many of the earliest inclusionary housing programs, including those in **Montgomery County MD** and **Irvine CA,** originally required homeownership units to remain affordable for a short period of time, five years or fifteen years at the most. These pioneers learned the hard way, however, that without long-lasting affordability controls the impact of their programs was limited, as thousands of inclusionary units were converted back to market-rate prices when the controls expired. Today, a majority of the nation's inclusionary housing programs, whether mandatory or voluntary, require long-term affordability for any residential units produced under these programs.[47]

Once these inclusionary units have been created, they must be marketed, monitored, and managed in such a way as to preserve their occupancy, eligibility, and affordability over time. Some municipalities carry out these responsibilities themselves. Others ask a non-profit partner like a CLT to shoulder these responsibilities on the municipality's behalf. The interests of the partners can sometimes diverge, however.

> Municipal Concern: A municipality wants to reduce its role, responsibilities, and administrative costs when delegating oversight responsibilities for inclusionary homes to a nonprofit partner.
>
> CLT Concern: A CLT wants the municipality to ensure a developer produces the quantity and quality of inclusionary housing required, while steering the developer toward the CLT. The CLT also wants to be able to cover its costs of marketing and monitoring these inclusionary homes on the municipality's behalf.

Worst Practice: Municipal Abdication

[46] Most CLTs, when funds are granted or when lands are donated to them, have used these municipal subsidies to reduce the purchase price of a CLT home. In the on-going debate between affordable prices versus affordable payments, most CLTs have come down firmly on the side of the former.

[47] This is true even for many of the pioneers. In 2005, **Montgomery County** amended its Moderately Priced Dwelling Unit ordinance to require 30-year affordability for inclusionary owner-occupied units. The City of Irvine created a CLT in 2006 to preserve new inclusionary units, both renter-occupied and owner-occupied, in perpetuity.

Municipalities that partner with a CLT in marketing, monitoring, and enforcing inclusionary housing have acknowledged the need for someone to assume long-term responsibility for the stewardship of these units. They have rejected the enticing idea of use and resale controls that are "self-enforcing." However, some municipalities wash their hands of all responsibility for making an inclusionary housing program work for the CLT. They require a developer to set aside a certain percentage of "affordable" units, but do not insist on those units being of the same quality and appearance as the other units in the developer's project. They require a developer to give the municipality or its designee the first option to purchase the inclusionary units, but neither steer the developer toward the CLT nor back the CLT in its endeavor to ensure that whatever units are produced will be appropriate and acceptable for the lower-income households to whom the CLT will be selling these homes. They expect the CLT to monitor and enforce long-term contractual controls over the occupancy and resale of inclusionary units but they make no provision for helping the CLT to cover the cost of stewardship.

Worst Practice: Failing to Plan for the Cost of Stewardship

Another harmful practice occurs when a municipality acknowledges the need for oversight of inclusionary units, either by a municipal agency or by a nonprofit partner, but provides no mechanism for covering the cost of these administrative responsibilities. **Denver, Colorado** is a case in point. Since it was adopted in 2002, Denver's inclusionary housing ordinance has produced over 700 units of affordably-priced, resale-restricted, owner-occupied housing. The City's Division of Housing and Neighborhood Development administers the inclusionary program, but no staff were initially assigned to the program and no money was appropriated from the general fund to create a new position. Eventually, the Division found the funds to hire a single full-time employee to oversee the City's inclusionary housing program, although at least three people would be needed to administer a portfolio of this size.[48].

Best Practice: Encouraging Developers to Partner with a CLT

Some municipalities formally or informally steer private developers of residential projects with a municipally-mandated affordability component toward the local CLT. Inclusionary housing programs rarely designate a particular organization outside of city government as the only possible steward for a municipality's inclusionary units, but some programs are crafted in such a way as to make the CLT the preferred partner of the municipality when it comes to marketing inclusionary homes and preserving the long-term occupancy, and affordability of these homes. Even after the CLT is identified as the municipality's designated steward for the inclusionary units, however, municipal officials stay in the picture, ensuring that the inclusionary units are constructed in compliance with

[48] More recently, the Division has been exploring a better way of stewarding the city's inclusionary units. Working with the Colorado Land Trust, the Division is in the process of transferring the first inclusionary units to the CLT. One advantage of working with the CLT is that the CLT can support ongoing monitoring through lease fees and other charges. However, because such fees are not charged to other homeowners in the city's inclusionary housing program, it may be harder to sell these homes than if appropriate fees were imposed on all projects from the start.

the municipality's requirements and encouraging the CLT's early involvement in shaping the units' design, location, and marketing.

For example, **Burlington VT** requires inclusionary units to remain affordable for a minimum of 99 years, with prices that rise no faster than the resale formula used by the Champlain Housing Trust. Further, Burlington's inclusionary zoning ordinance gives the city's Housing Trust Fund or its designee the first right to purchase every inclusionary unit. The Champlain Housing Trust has been the designee for nearly all of the home-ownership units created through inclusionary zoning.

Boulder CO provides another example. The City's inclusionary ordinance has so far produced a portfolio of 500 resale-restricted, owner-occupied homes, with roughly 50 new homes being added every year. Developers have occasionally been encouraged to pre-sell inclusionary units to Thistle Community Housing, a local CLT. This has been a boon to all parties. The developer's risk is reduced, because 20% of the project is pre-sold before ever breaking ground. Thistle's risk is reduced, because it is not holding land or constructing houses, but accepting units at completion on a turn-key basis. The price to the homebuyers is reduced. The last has happened because Thistle is usually able to negotiate a lower sales price from the developer – generally 5%-9% lower than the city-mandated inclusionary price – in return for Thistle's contractual commitment to purchase and market all of the developer's inclusionary units. Thistle's cost of serving as the long-term steward for these units is covered through the collection of monthly lease fees and the collection of a 3% "Lease Reissuance Fee" on the resale of every CLT home.

Programmatic Compatibility

Many CLT projects will require public subsidies from multiple sources. These sources of project support may come from multiple jurisdictions such as the city and county governments or from different programs administered by the same municipality. In these situations it is important to ensure that the performance requirements imposed on the CLT by all of these sources of municipal support are compatible, both with each other – and with the CLT.

> Municipal Concern: Most municipalities prefer to support CLT projects through their existing housing assistance programs with as few administrative or regulatory changes as possible.
>
> CLT Concern: The CLT wants full access to the municipality's existing housing assistance programs, but needs program requirements to fit the CLT model and to complement, not conflict with the requirements of other funding sources.

Worst Practice: Incompatible Requirements

There are two worst cases here, both arising out of a municipality's failure to reexamine and retool existing programs to accommodate a new way of doing affordable housing. In

the first scenario, different funding sources impose different (and sometimes contradictory) performance requirements when granting or loaning funds to a nonprofit or for-profit developer of affordable housing. Although a problem for every recipient of municipal assistance, the administrative burden of incompatible requirements may be especially difficult for CLTs to bear because so many are still in a formative stage, with a small staff. The second "worst case" scenario is unique to the CLT. It occurs when a municipality imposes grant or loan conditions on a CLT that were originally designed either to subsidize rental housing for lower-income tenants or to help lower-income homebuyers in purchasing market-rate homes. Many of these conditions are not be conducive to the leased-land, resale-restricted model of the CLT, making CLT homes more difficult to develop and to finance, impeding the CLT's productivity and undermining the CLT's viability.

Best Practice: Coordination among Municipal Programs

Contradictions between the requirements of various subsidy providers can cause enormous administrative and legal headaches for a CLT. If two government agencies intend routinely to support the same CLT projects, it makes sense to make sure not only that what is required of the CLT is compatible, but that grant agreements, loan agreements, liens, and covenants used by different programs within the same municipality or used by different municipalities supporting the same CLT actually match. The Community Housing Trust of Sarasota County, for example, was able to work with the **City of Sarasota FL** and with **Sarasota County** to develop a project development grant agreement that was acceptable to both municipalities. The Orange Community Housing and Land Trust developed a restrictive covenant that was approved for use by both the Town of **Chapel Hill** and **Orange County.** Using a single document to satisfy the needs of both jurisdictions has allowed OCHLT to layer funding from both sources without worrying about regulatory conflicts.

Competing Programs

Most cities see the CLT as but one option for helping lower-income households to purchase a home, one tool among many in the municipality's toolbox. While a CLT does not need to be the community's only homeownership program, the success of a local CLT can be undermined by other governmental programs if different programs do not offer different levels of assistance and do not serve different populations. A CLT asks assisted homebuyers to accept certain restrictions on the use and resale of their homes, including an obligation to pass along the benefits of any public subsidies to future homebuyers of limited means. When a municipality offers similar subsidies to the buyers of market-rate homes without imposing restrictions and obligations similar to those imposed on the CLT, the latter's buyers are given good reason to question the fairness of the deal they are being offered.

> Municipal Concern: Recognizing that CLT homeownership may not be for everyone, municipalities often operate multiple homeowner assistance programs, some with resale restrictions and some without.

CLT Concern: The CLT will have difficulty selling homes with use and resale controls if lower-income homebuyers can receive the same level of municipal support to purchase market-rate homes that have no controls whatsoever.

Worst Practice: Competing Programs

Even worse than municipal programs with incompatible requirements are municipal programs that produce competing homeownership products. In the latter case, a municipality supports the CLT's production of resale-restricted, owner-occupied homes while continuing to provide the same per-unit subsidy for less-restricted housing that is offered for sale on the open market to the same population in the same neighborhoods as those served by the CLT. Lower-income homebuyers have access, in other words, to two competing homeownership programs. They can either purchase a home and a parcel of land with few restrictions on the property's use and no restrictions on its resale (except, perhaps, for being required to return a portion of the subsidy when the home is resold) or they can purchase a CLT home on leased land with many restrictions on use and resale. If the size of the city's subsidy is similar and the price of the homes is similar, none of the CLT's homes will sell until all of the unrestricted homes have sold. The CLT is set up to falter or fail.

SAM versus CLT in Portland, Oregon

Few municipalities have been more supportive of their local CLTs than Portland, Oregon. But the same city government that played a leading role in helping to start the Portland Community Land Trust in 1999 – and has continued to provide both operating support and project support ever since – promoted, until recently, a ***competing*** homebuyer assistance program to the detriment of the PCLT.

A lower-income household wishing to purchase a market-priced home could receive a shared appreciation mortgage (SAM) of up to $71,000 from the Portland Development Commission, the city's urban renewal agency. Up to $14,000 in additional funding was made available to this same household for necessary repairs. Few restrictions were placed on the use of this subsidized home. No restrictions were placed on the eligibility of the buyer or the price of the home on resale. The homeowner could resell to anyone who was willing and able to pay the full market price. PDC recaptured the amount of its original subsidy out of the proceeds from the sale, along with 25% of any appreciation that had occurred in the property's value. Nothing was recaptured if the homeowner remained in the home for longer than twenty-five years. Either way, the home resold for a market price that no lower-income household could afford to pay.

Meanwhile, the Portland Community Land Trust was developing homes for the same population of lower-income homebuyers, using funding from the Portland Development Commission and the Bureau of Housing and Community Development. These city subsidies reduced the purchase price of a PCLT home by roughly the same amount as the maximum SAM, about $70,000 per home. The PCLT's homes, however, unlike those

assisted with SAMs, came with many restrictions on their use and resale in order to protect the homes' occupancy, condition, and affordability. This put the PCLT at a competitive disadvantage. Savvy homebuyers were less likely to purchase a resale-restricted home from the PCLT when they could purchase a market-priced home with the city's help with no continuing obligation except to replenish the city's coffers when the home resold for whatever the market would bear.

Portland discontinued its SAM program in 2007.

Best Practice: Differentiation among Municipal Programs

A few municipalities, having embraced a three-fold policy shift toward subsidizing homeownership, preserving public subsidies, and preserving the affordability of publicly assisted homes described in an earlier chapter, have made a local CLT the priority recipient of ***most*** municipal investment in the production or preservation of affordable housing. This is not common, however, nor is it necessary. What ***is*** necessary for a new CLT to thrive is being able to access existing programs on terms that do not undermine the CLT's ability to market its resale-restricted, owner-occupied housing. If the municipality is going to continue to subsidize both unrestricted market-rate homes and resale-restricted CLT homes, it would be best for these homeownership assistance programs to be as different as possible, instead of nearly the same. Even better is for the municipality to subsidize homes with permanent restrictions on their use and resale more deeply than homes with no provision for lasting affordability. Buying more through the CLT – more oversight, more affordability, more "backstopping" of publicly-assisted homes and newly-minted homeowners – a municipality should be willing to invest more to make this enhanced form of tenure a reality.

Sustaining the Organization: Municipal Support for CLT Operations

A CLT is charged with the long-term stewardship of any lands and buildings that are brought into its portfolio, often with a municipality's assistance. A CLT may suspend project development for a period of time, awaiting new opportunities and additional subsidies, but a CLT can never stop managing its lands, monitoring its leases, or enforcing the use and resale controls that encumber the buildings that are located on its lands. Its operations must be sustained, even when project development has slowed.

The Need for Operating Support

A mature CLT may eventually generate the majority of its operating revenue through earned income rather than through external grants. These internally generated sources of support include development fees, marketing fees, resale fees, membership fees, and the lease fees that are charged to homeowners for using the CLT's land. Regardless of the organization's age or size, however, nearly every CLT looks to local government for a portion of its operating support, either to sustain capacity it already has or to expand its capacity to pursue new project or to develop new programs.

The level of operating support provided by a municipality to a CLT should coincide not only with the magnitude of the organization's need but with the magnitude of the responsibilities that are placed on the CLT's shoulders. Every CLT is different, but support from local government tends to fall into several distinct phases over the life cycle of a CLT.

The Start-up Phase

Operating grants from local government and private foundations are often the principal source of revenue for a start-up CLT. The City of **Portland OR**, for example, provided start up grants of $100,000 per year for the first three years of operation of the Portland Community Land Trust. Since then, the City has provided the PCLT roughly $80,000 annually in operating support.

The Early Growth Phase

As a CLT begins to undertake projects, an increasing share of the organization's operating revenues tends to come from project-related income such as development fees and marketing fees. In addition, once the CLT has an established track record, it is often easier to attract foundation and corporate grants and even individual donations. However, during this growth phase, local government operating support can be essential to the CLT's success. Even though municipal support may decline as a percentage of the CLT's total revenue, a stable or even gradually increasing level of operating support from local government can allow the CLT to take on new projects and to build systems necessary to support sustained growth.

The Stewardship Phase:

A majority of the nation's 200 CLTs are both young and small, still in the phase of early growth. A number of older CLTs, however, have reached a scale in their holdings and operations where the organization is now less dependent on operating grants from local government. Over time, as the number of units "in trust" has grown, these CLTs have been able to rely increasingly on ground lease fees, membership fees, resale fees and other internally-generated revenues to operate the CLT.[49] Several newer CLTs have projections that show that they reach a "sustainability threshold" once they hold 150 to 200 units in their portfolios. That is, at their sustainability threshold they are likely to receive sufficient income from internally-generated revenues to be able to cover the cost of their stewardship responsibilities. Nevertheless, it is important to note that even mature CLTs continue to receive external support for their operations from local governments or private foundations. Once a CLT's portfolio has grown to a certain size, however, most external support for operations tends to be directed toward new programs or projects rather than being used for stewardship of the CLT's existing housing.

Operating Grants vs. Development Subsidy

Operating support differs from a project development subsidy in that operating support can be used for general organizational costs such as staff salaries, office rent, office supplies, and program expenses that are not directly related to a specific housing development. Common uses of operating support include:

- General administration
- Strategic planning
- Exploring the development of new projects or programs
- Delivering homebuyer education
- Homebuyer outreach and eligibility screening
- Marketing homes
- Monitoring compliance with the ground lease
- Fundraising
- Advocacy and community education
- Membership development

Menu of Sources of Operating Support

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

[49] For example, Dudley Neighbors Inc. and its affiliate the Dudley Street Neighborhood Initiative received $883,000 in operating support from the **City of Boston** in the first ten years of operation. By 1998, however, the city and the CLT agreed that DNI/DSNI had a fundraising capacity and an assured stream of internally-generated fee revenue sufficient to sustain the organization at a reduced level of operating support from municipal sources.

Grants and Donations

Grants from Local Government
- Federal sources such as HOME and CDBG
- Local housing trust funds
- General local funds

Donations from Private Sources
- Foundation Grants
- Corporate Sponsorships
- Private Donations
- Fundraising Events

Revenues from Project Development
- Developer Fees
- Marketing Fees

Revenues from On-going Operations
- Ground Lease Fees
- Lease re-issuance/resale fees
- Membership dues
- Fees for services

Grants from Local Government

Operating grants from local governments are a significant source of support for many CLTs. Municipal support is particularly important in the early years of a CLT when an organization is still working to develop a threshold number of CLT units through which they can sustain the basic administrative and operating costs of the organization through relevant fees. Even when local government provides only a small part of the overall operating budget, this support can be key to securing other funds. Many local governments provide general operating grants to CLTs, while others provide operating support for specific programs such as outreach and education to prospective homebuyers.

Capacity grants can be used to cover general organizational expenses and/or to pursue expansion of the organization into new programmatic areas. This type of funding is a particularly important means of sustaining the CLT organizational budget in times of limited income from other revenue sources such as development fees and lease fees.

Common Governmental Sources of Operating Grants:
- **Community Development Block Grant:** Cities and Counties that receive federal CDBG funds can use these funds to meet a variety of community needs including provision of housing for low-income residents. Operating grants to CLTs and other housing nonprofits is an eligible activity and many local governments fund their CLT operating grants from this source. The City of **Albuquerque NM** provides Sawmill CLT with recurring operating grants of $200,000 in CDBG funds

annually. This funding is used for staff salaries, pre development work, and building organizational capacity.

- **HOME Program:** The federal HOME program requires participating jurisdictions to set aside fifteen percent of their federal HOME block grant for operating support to Community Housing Development Organizations (CHDOs) that are producing housing with HOME funds. Many CLTs are recognized as CHDOs and CHDO operating support grants are a common source of support for CLTs across the country. Homestead CLT (HCLT) in Seattle, for example, receives $30,000 of CHDO operating support from the **King County WA** HOME program. These funds are used to increase HCLT's capacity to serve King County.

- **Local Housing Trust Funds:** Many local governments have established dedicated sources of revenue to support affordable housing. Local housing trust funds are often funded with local real estate transfer taxes, impact fees, inclusionary zoning in-lieu-of-production fees, or other municipal contributions. Well designed programs allow the municipality to use trust fund revenues not only to support projects but to build the capacity of nonprofit housing developers, including local CLTs. The City of **Highland Park IL**, for example, provides annual grants of $100,000 from its Affordable Housing Trust Fund to support operations of the Highland Park CLT. The housing trust fund in **Burlington VT**, capitalized through a 1% add-on to the city's property tax rate, distributes "capacity grants" on an annual basis that may used to support the "staffing, training, planning, fundraising, or on-going operations" of the nonprofit corporations that are developing residential projects that "guarantee the perpetual affordability of these units."[50]

- **Other Municipal Sources**: CLTs receive support through a variety of other local government programs including city or county general funds, Housing bond proceeds, and tax increment financing (TIF) revenues. For example, the **Delray Beach, FL** Community Redevelopment Agency has committed a portion of its Tax Increment revenue, raised from a TIF district within the CRA's target area, to cover the annual operating expenses of the Delray Beach CLT.

Champlain Housing Trust

The City of Burlington, Vermont provides operating grants to the Champlain Housing Trust from three sources: CDBG, HOME, and the Burlington Housing Trust Fund. Although there is no contractual guarantee of multi-year funding and CHT must re-apply for funds on an annual basis, the City has provided grants to support CHT's operations every year since the organization's incorporation as the Burlington Community Land Trust in 1984. In FY 2006/2007, CHT received $125,000 in operating support from CDBG, $25,000 from HOME (as a city-designated Community Housing Development Organization), and a $46,500 capacity grant from the City's Housing Trust Fund.

[50] City Ordinances (1988). Housing Trust Fund. Chapter 18. C. o. Burlington. Burlington, Vermont. **Article VI**.

CHT uses CDBG funds received from the City of Burlington to support pre-development work on homeownership projects as well as for homebuyer education and counseling. Approved uses also include support for construction and for the rent up of projects already in progress. HOME operating grants are used to support staff salaries and operating expenses related to the development of HOME-assisted projects within the city limits. Capacity grants from the Housing Trust Fund are used for staff salaries and operating expenses related to CHT's Home Ownership Center.

All funds from the City of Burlington are distributed on a reimbursement basis and require the submittal by CHT of appropriate receipts and invoices. The City also requires CHT to provide annual narrative reports on the use of the funds. The City retains the right to withhold or terminate payment if there is evidence of improper use of the funds, a failure to comply with the terms of the agreement, and/or poor performance.

Donations from Private Sources

One of the advantages for local governments working with a CLT is that the CLT is generally able to leverage public sector investment with private contributions. As 510(c)(3) tax-exempt organizations, donations to a CLT are tax deductible. In a national survey of CLTs, conducted by the Lincoln Institute in 2006, half of the 119 surveyed CLTs reported receiving charitable donations from private sources, including foundations, private businesses (including banks, credits unions, and corporations), and individual donors.[51] A smaller survey of CLTs conducted the same year by Jeff Corey of the Northern Communities CLT and Jeff Washburne of the City of Lakes CLT, found that CLTs received between 10% and 70% of their operating revenue from such private sources.

- **Foundation Grants:** Community foundations, family foundations and larger grant making foundations with an interest in affordable housing are frequent CLT contributors. Generally these grants are tied to specific outcomes or programs – few foundations provide ongoing unrestricted operating funds. The California Community Foundation, the Community Foundation serving the **Los Angeles** area, recognizing the impact of rapidly rising land costs on its ongoing work supporting affordable housing in the region, founded the Community Foundation Land Trust in 2002 with a contribution of $3.8 million to be used for operations as well as investment in initial projects.

- **Corporate contributions**: Many CLTs have been successful in securing charitable contributions from corporations. These donors generally fall into one of three categories:
    - ***Housing Industry***: While many banking industry contributions are motivated by the community reinvestment act, CLTs like other non-profit organizations that develop owner-occupied housing for low- and moderate-income households…also frequently receive contributions from mortgage

[51] Sungu-Eryilmaz and Greenstein, *op cit*. p. 16

lenders and secondary market institutions which are not regulated by CRA.

- **Local Employers:** Increasingly employers recognize that the shortage of affordable housing is impacting their workforce. Many CLTs receive operating support from large local employers. At the inception of the organization, First Homes in **Rochester, MN** received a seven million dollar grant from the Mayo Clinic, the area's largest employer, to support ongoing operating costs. This was matched by nearly $7 million raised by the local community foundation, mostly from smaller employers in the Rochester area. The Workforce Housing Association of Truckee Tahoe in Truckee CA was created with key financial support from the North Lake Tahoe Resort Association and is sustained through annual contributions from leading area employers. Much the initiative and early financial support for the Jackson Hole Community Land Trust in **Jackson, WY** came from business leaders who had grown increasingly concerned about hotels and stores being able to retain employees and public agencies being able to attract school teachers, nurses, police officers, and other key workers. Similar concerns – and similar support from the business community – fueled development of the Two Rivers Community Land Trust in **Washington County, MN**.

- **Individual Donations**: Some CLTs manage ongoing fundraising efforts directed at the broader community. These programs can be time consuming but can generate significant unrestricted revenue. Some small CLTs, like the Community Land Trust Association of West Marin (CLAM) in **Point Reyes Station CA**, raise the majority of their annual operating budget from small individual donations from community residents. OPAL in **Orcas Island, WA** raises nearly $350,000 annually from individual donors with $100,000 of that amount dedicated to annual operating costs and the remainder used for project subsidies.

- **Fundraising Events**: Like other nonprofits, many CLTs raise operating support through annual fundraising events. These events can build important community goodwill in addition to raising funds but they can also take limited time away from other pressing tasks. The CLTs consulted for the present report tend to raise an average of only 5% of their operating revenue through local fundraising.

<u>Revenues from Project Development</u>

Developer Fees

The majority of CLTs report that they collect developer fees for each unit of affordable housing that they develop or help to develop. Some CLTs manage the entire development process while others partner with housing developers to create new units or to rehabilitate existing homes for the CLT's portfolio. The CLT's share of a project's development fees is proportionate to the degree of involvement in the development process.

Development fees are structured either as a flat fee per unit or as a percentage of total development costs. Most municipalities and other funding sources recognize that the devel-

opment of homeownership units takes considerable staff time. Organizations need to be compensated for this time to remain sustainable. The City of **Madison WI**, for example, allows the Madison Area CLT to take up to 15% of a project's total development costs as a developer fee to support the MACLT's on-going operations. MACLT's director reports, however, that because of typical constraints in project budgets, the MACLT is usually able to build into the project budget a fee of only about 6% - 7% per unit.

Marketing Fees

A major responsibility for most CLTs is coordinating the marketing and sale of affordable homeownership units. Many CLTs, even those which are not directly involved in the actual development process, provide a comprehensive set of services to these projects, including: marketing and outreach to potential homebuyers; managing waiting lists/lotteries; screening potential buyers for eligibility; coordinating homebuyer orientation and counseling prospective homebuyers; and working with local lenders to qualify low and moderate income buyers for mortgages.

CLTs often charge a per unit fee for this set of services, referred to as a marketing fee. The fee may be different for individual projects based on the size of the project and the complexity of the financing sources utilized. Typically, a real estate agent would charge a fee of 6% of a home's sales price to perform similar services. CLTs, like other non-profit agencies that perform such services for affordable projects, typically charge no more than 3% of the sales price. Some CLTs collect a standard flat marketing fee for every home sold rather than a percentage of the sales price. As of 2007, the City of Lakes CLT in **Minneapolis MN**, for example, charges a flat marketing fee of $2,500 per unit regardless of the sales price.

<u>Revenues from On-going Operations</u>

Ground Lease Fees

Ground lease fees are paid monthly to the CLT by every homeowner. While these fees may be the CLT's most reliable source of revenue, lease fees are usually kept relatively low by most CLTs to maintain the affordability of their homes. Higher monthly ground lease fees make more of a contribution to the organization's operating costs, but money that families must pay in lease fees is not available to support their mortgage; a higher lease fee, in other words, reduces the maximum price of a CLT home that a family can afford. CLT ground lease fees typically range from $25 - $50 per month, although a few CLTs, in an effort to enhance organizational sustainability and to reduce their dependency on external sources of operating support, are now charging as much as $100 per month. Although ground lease fees assure the CLT of a consistent revenue stream, few start-up CLTs will be able to count on them covering a significant portion of their operating budget because the number of units in the CLT's portfolio is likely to be rather small in the early years. Later on, as its portfolio grows, a CLT can realize significant revenues from this single source. Thistle Community Housing in **Boulder CO**, for example, reports that 32% of the cost of running their CLT program is paid by ground lease fees. Although Thistle only charges an average lease fee of $30 per month, over $75,000 per

year is generated by the 211 units of resale-restricted, owner-occupied housing currently under Thistle's stewardship.

Lease Re-issuance/Resale Fees

Another internal source of operating support comes from lease re-issuance fees which are collected by an increasing number of CLTs when resale-restricted houses and condominiums change hands. This charge is used by the CLT to defray some of its own costs of managing the transfer of ownership from one low-income homeowner to another. In some cases this fee is charged to the sellers of CLT homes, reducing their proceeds from the sale in the same way that a broker's commission would. In other cases, the fee is added to the resale price, increasing what the next buyer must pay to purchase the CLT home. OPAL CLT on **Orcas Island WA**, for example, charges a fee of 1% to both the buyers and sellers of a resold home, netting the CLT a fee of 2% on each resale. Lease re-issuance fees range from 1%-6% of the formula-determined resale price of a CLT home. Once there is a significant portfolio of CLT homes, such fees can become a sizable source of internally generated revenue.

Membership Dues

Most CLTs are open membership organizations. Area residents who support the organization generally pay annual membership dues ranging from $1 and $50 to support the organization. Although membership income is a small factor in most CLT budgets, it can provide a predictable source that grows steadily as an organization matures. The Champlain Housing Trust in **Burlington VT**, for example, has thousands of individual members who pay very modest membership fees (some as low as $1 per year), but CHT collects over $70,000 in membership fees annually, which covers about 5% of the organization's operating budget.

Fee For Service Income

Some CLTs earn fee for service revenue for performing specific services such as educating prospective homebuyers, packaging loans for local mortgage lenders, or monitoring local inclusionary housing units.

Balancing the Concerns of Municipality and CLT

When it comes to municipal support for a CLT's operations, the issues most likely to generate a degree of discord between the staff of the municipality and the staff of the CLT are the following:

- Can the municipality make a predictable, multi-year commitment to support the CLT's operations?
- What is the most effective and least burdensome way for the municipality to ensure a CLT's performance in exchange for the municipality's support?
- What is the mix of project support and operating support most likely to strengthen and sustain the CLT, especially in the CLT's early years?

Predictable Operational Funding

Regular operating support from a municipal partner is extremely valuable, especially for a young CLT that has yet to grow to the point where it can cover most of its stewardship costs out of revenues that are generated internally. If a CLT can plan on receiving a predictable level of operating support from external sources, the organization's staff can be more aggressive in their growth plans; they can develop new programs much faster; they can offer more stable jobs, enhancing their ability to attract more qualified staff. Operational funding that a CLT can count on receiving from a municipality over a multi-year period can also help the CLT to secure additional funding from other public and private sources, leveraging the municipality's investment many times over.

Municipal Concern: The municipality wants maximum discretion and maximum flexibility in making year-by-year allocations of available housing funds.

CLT Concern: The CLT wants maximum predictability in the revenues that it receives for the organization's general operations.

Worst Practice: Annual Grant Competition

Many municipalities refuse to commit operating funds beyond a single year. Some are actually prevented from making multi-year commitments by their charter or by conditions attached to pass-through funds they are administering on behalf of a federal or state agency. Even when they are not legally prohibited from committing funds for future years, however, municipalities often insist on dispensing funds on an annual basis. They either negotiate annual grant agreements with a few favored nonprofit partners or conduct open competitions in which every housing nonprofit must compete against their peers for a share of the city's funding. More experienced municipal staff usually recognize that building the organizational capacity of a young CLT is a multi-year proposition. They know the CLT needs several years of predictable funding if it is likely to show meaningful progress. No organization should be guaranteed funding in the face of poor performance, but time-consuming annual applications for capacity building grants can stand in the way of growing toward sustainable capacity[52].

Best Practice: Multi-year Commitments

Some municipalities that have decided to back a CLT have made a formal or informal commitment to provide a basic level of operating support over a period of several years. Both the municipality and the CLT are able to rely on this multi-year commitment in pre-

[52] The most common argument made on behalf of annual competitions is that they level the playing field, providing for the fair and equal treatment of all potential recipients of a municipality's funding. Precisely because capacity building requires an ongoing commitment of operational funding, jurisdictions have every reason to be careful and fair in selecting recipients and monitoring their progress over time. Once selected, however, recipients should be able to count on ongoing support for a specified period. Annual competitions not only waste the time of the CLT and other would-be recipients; they are unfair to organizations that don't receive municipal support, when the municipality is already predisposed to supporting an organization whose capacity the municipality has been building for years.

paring future budgets and planning future projects. Each year during this multi-year period, municipal officials and the CLT's staff meet to discuss the CLTs progress, identifying mutual goals for the coming year and setting the amount of the grant renewal. If the municipality concludes that the CLT is failing to perform as promised or if sufficient funds are not available, municipal staff may decide to reduce the annual grant, relative to the municipality's original commitment. If the CLT exceeds expectations, however, or makes a convincing case for increased funding, municipal staff may recommend increasing the grant beyond the initial multi-year commitment.[53] The City of **Albuquerque's** five-year plan includes providing CDBG grants to the Sawmill CLT for operating support. Initially, the city allocated $150,000 per year for the CLT, but increased its annual grant to $200,000 in 2007 because of the CLT's project success and operational needs.

Ensuring Organizational Performance

Some municipalities allow operating grants to be relatively unrestricted, allowing the CLT to use municipal funds on general organizational capacity such as staff salaries, rent and other operating costs. Other municipalities structure operating support more narrowly, asking the CLT to submit a proposal for specific programs and tasks the CLT is expected to complete in a given year, such as predevelopment tasks for specific real estate projects or homebuyer education. Either approach is workable, but the municipality must be clear in declaring what is expected of the CLT and then embody those expectations in its grant agreements and other contracts with the CLT.

Municipal Concern: The municipality wants to assure political leaders, local taxpayers, and federal agencies (if discretionary funds are being passed through) that any recipient of operating funds is producing and performing as promised.

CLT Concern: The CLT wants maximum flexibility in using any funds received from a municipality, with minimal requirements for reporting on these funds.

Worst Practice: Micromanagement of Operating Grants

Operating grants are often provided to CLTs – and to other nonprofit developers of affordable housing – on terms that require recipients not only to use those funds quite narrowly, but to report on their use quite extensively.

Best Practice: Annual Performance Goals

Municipalities act properly and prudently in requiring CLTs to identify a set of annual goals against which the organization's performance can be measured. These goals should allow the grantor to assess whether the CLT has performed as promised, without being so detailed that the CLT is forced to do something that is unnecessary merely to satisfy the

[53] **Portland OR** provides an excellent example of this approach. The Portland CLT is a line item in the City's budget and has been assured of on-going operating support over a number of years.

terms of the grant agreement. For example, **Bellingham WA** provides annual operating support to the Kulshan Community Land Trust from the city's general funds. In 2006, the city provided $140,000 to support staff salaries and costs related to achieving the following outcomes:

1. Initiating new development projects
2. Building a Revolving Acquisition Fund
3. Increasing homebuyer educational opportunities
4. Responding to landowner/developer opportunities
5. Working with neighborhoods to identify opportunities to add small homes

Under the terms of the grant, the Kulshan CLT could use the funding for eligible costs including staff salaries and benefits, office overhead, an independent financial audit, and speaker and travel fees. While the specific goals are likely to change annually, the staffing and overhead costs are likely similar year to year as is the level of the jurisdiction's grant.

Mixing Operating Grants and Development Fees

CLTs tend to rely less on project development fees than do many other nonprofit housing organizations. Indeed, many housing nonprofits exist primarily for the purpose of developing new housing, while most CLTs do more than just development. A growing number of CLTs do no development at all, serving instead as the long-term steward for housing produced by nonprofit (or for-profit partners) or for housing mandated by inclusionary zoning. Where CLTs do earn significant development fees, however, there is an obvious relationship between operating grants provided by a municipality and project development fees allowed by the municipality. Both can be used to pay for staffing and overhead. When municipal officials are thinking about how best to support a CLT's operations, it is important to recognize that developer fees are generally considered "at risk" during the development phase. The fees are earned when the project is completed on time and on budget, but may be reduced in the event of cost overruns. This risk provides a strong incentive to CLTs to manage costs and to complete projects quickly. In many cases however, cost increases or project delays are beyond the CLT's direct control. The CLT's projected developer fees can end up being used as a "back-up" contingency, poured into the project. Organizations that rely too heavily on development fees are precarious. Delays in one large project can lead to layoffs or cutbacks which reduce the organization's ability to earn future fees. Operating grants from local government can be the key to a CLT surviving the inevitable ups and downs of the real estate development process. The CLT in **Highland Park IL**, for example, is usually able to take only a $3,000 - $5,000 development fee on the initial sale of each newly-constructed home, less than 2% of the Total Development Cost. The Highland park CLT is able to sustain itself in spite of this relatively low fee because it also receives an annual operating grant from the city's Housing Trust Fund. This grant is used to support the CLT's programs, its fundraising efforts, and its stewardship of homes created through the city's inclusionary housing program.

Municipal Concern: The jurisdiction has an interest in tying funding to completion of

successful projects, while ensuring that development fees don't significantly erode affordability.

CLT Concern: CLTs need a reliable source of operating revenue, allowing it to weather the ups and downs of the development cycle.

Worst Practice: Forcing Dependency on Development – and then Limiting Fees

Funders want to make sure that scarce housing subsidies are used to build or rehabilitate housing units and many choose to impose limits on the amount a CLT or other nonprofit developer can charge to a project for its development fee. Without such a limit, the concern is that a CLT could charge too high a fee, increasing the total development cost and ultimately driving up the necessary level of local project subsidy funds. It is important for local governments to acknowledge, however, that if strict limits are placed on the level of development fees which can be charged per unit, then adequate funding for operations must be provided from other sources, such as grants from local government sources

Best Practice: Diversity of Income Sources

Jurisdictions should expect CLTs to rely on a mix of operating grants and development or marketing fees rather than depending on any one source exclusively. Operating funds should not be provided indefinitely to organizations that can never produce results but neither should the availability of development fees be seen as a substitute for ongoing capacity building grants – especially in the early years of a new CLT.

Best Practice: Flexible Limits on Development Fees

Many jurisdictions, rather than setting formal limits on the level of development fees, instead review fees as part of the overall project development budget when awarding funds to a project and then limit the level of subsidy rather than the development fee itself. A proposal may include a generous development fee but the jurisdiction knows that cost increases are a real risk. If the jurisdiction commits to a reasonable level of funding per unit created, any cost increases are likely to decrease the developer fee and any savings will increase it.

Generally the jurisdictions that place the strictest limits on a CLT's ability to charge development fees to project budgets are those that provide the most generous operating support. For example, Church Community Housing in Rhode Island generally charges a combined development fee and marketing fee of about $7,000 -$10,000 per unit. CCH does not receive grant support for its operations, however, from any of the several small municipalities within which the CLT is working. Similarly, while the City of **Madison WI** does not provide grants to the Madison Area CLT to support operations, it allows the CLT to take a generous development fee of up to 15% of the total project costs on all projects for which the municipality provides funds.

Taxing the Property: Municipal Assessment of CLT Homes

In most community land trusts, property taxes are paid entirely by the leaseholders. Even though the CLT holds title to the underlying land, the owners of single-family homes (or the owners of other residential or commercial buildings) are given an exclusive right to use and to occupy this land for a very long time. It is their responsibility to pay the property taxes on ***both*** the land they lease and the building(s) they own. Any tax bills received by the CLT for lands conveyed through a ground lease are passed along to the leaseholders for payment. The long-term affordability of CLT home can be affected quite significantly, therefore, by how both the CLT's lands and the leaseholders' buildings are assessed by the local jurisdiction.

Effect of Property Taxes on Affordability

Property taxes are only part of a homeowner's total housing costs. Unlike the other payments an owner must make to finance, insure, service, and maintain her home, however, property taxes are one component of a home's affordability over which a city or county has significant control.[54] If property taxes are high when a CLT home is originally purchased, less of a homebuyer's limited income will be available to pay principal, interest, and insurance. She can borrow less. She can afford less. If property taxes become higher ***after*** a CLT home is sold, moreover, less of the homeowner's limited income will be available to pay other household expenses, including those required to maintain the home. The home can become steadily less sustainable and less affordable. To the extent that a municipality and a CLT have a common interest in the initial affordability and continuing affordability of resale-restricted, owner-occupied housing, both parties should have a common interest in seeing that CLT homes are equitably taxed.[55]

The owners of CLT homes expect to pay their fair share of local property taxes, but too often they are required to pay much more. In assigning values and levying taxes, many local assessors fail to take into account the fact that CLT homes are heavily encumbered with durable restrictions on their use, improvement, subletting, and resale – restrictions that significantly reduce a property's marketability and profitability. Likewise, many assessors fail to take account of the fact that the lands owned by a CLT are leased out for 99 years for a monthly fee that is typically far below what the leasehold's market-rate rent would be. When assessors overlook the special circumstances of this unique form of tenure, the owners of CLT homes are frequently forced to pay property taxes not only on

[54] The degree of local control is usually limited, however, by rulings of a state court, statutes of the state legislature, and/or guidelines from a state's department of taxation or board of tax equalization. Even in jurisdictions where state guidelines exist for how resale-restricted, owner-occupied housing should be assessed, however, local tax assessors are allowed considerable discretion in valuing and taxing such property.

[55] Both parties should also have a common interest in making sure that CLT homes qualify for any "homestead" exemptions or property tax rebates that are permitted under state law.

real estate values that are theirs, but on values that neither they nor the CLT can ever claim for themselves.

Consider a resale-restricted CLT house where the CLT has received enough grant support from a municipality to remove the entire cost of the underlying land and a portion of the cost of construction, enabling the CLT to sell a house having a market value of $210,000 to a lower-income family for the relatively affordable price of $85,000. If the CLT restricts the resale price of this house, using a formula that allows the homeowner to pocket 25% of the house's appreciated market value when the property is resold, this CLT house will resell for a maximum price of $116,804 after seven years of occupancy (assuming market appreciation of 7 percent annually). [56]

	Market value of the CLT house	Restricted resale price of the CLT house
Initial purchase	$210,000	$85,000
End of Year 1	$224,700	$88,675
End of Year 2	$240,429	$92,607
End of Year 3	$257,259	$96,815
End of Year 4	$275,267	$101,317
End of Year 5	$294,536	$106,134
End of Year 6	$315,154	$111,288
End of Year 7	$337,215	$116,804

Note, however, that the house's ***market*** value by the end of Year 7 will have reached $337,215. If the municipal assessment takes account of neither the initial below-market purchase price nor the permanently restricted resale price, the owner of this CLT house will be forced to pay property taxes not only on $116,804 of value to which she has title but on $220,411 of value she does not own and can never claim for herself.

This can be an enormous barrier to the expansion of resale-restricted housing, especially in places where the market value of residential real estate is rapidly rising and where property taxes are keeping pace. CLT homes sell and resell for prices well below their market value, but they are taxed as if their owners are realizing the same gains as any other homeowner. At a certain point, no matter how affordable the cost of purchasing these resale-restricted homes may have been, taxes that are pegged to the property's market value will render the cost of holding these homes ***un***affordable for persons of modest means.

Menu of Municipal Options for Taxing CLT Homes

[56] Different resale formulas will of course yield a different maximum price. In the hypothetical presented here, a resale formula that grants the seller 25% of the appreciation for that portion of the property's total development cost initially purchased by the homeowner would allow the seller to earn $32,804 in appreciation after seven years of occupancy. This would result in a resale price of $116,804.

Local taxation of land and buildings within the price-restricted domain of the community land trust varies significantly from one state to another. Because of the leeway that often given to local assessors in interpreting state guidelines, the taxation of CLT homes can even vary from one jurisdiction to another within the same state. In their efforts to produce and preserve affordability for lower-income homeowners, a number of CLTs have been successful in persuading local assessors to value and tax CLT homes differently than market-rate homes having no restrictions on their use or resale. There are three issues here:

- What is the value of a resale-restricted CLT ***home*** when it is first entered on the local tax rolls, considering that these homes are encumbered with durable restrictions on both the equity a homeowner may take out of the property when it is resold and the income a homeowner may earn if the property is sublet (assuming that subletting is allowed)?

- What is the value of ***land*** that is owned by a CLT when it is first 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 CLT during the term of the lease, and this land will be re-leased immediately to another low-income homeowner whenever it reverts to the CLT?

- How is the assessed value of a CLT home ***adjusted*** over time, considering that the property will must be resold for a formula-driven price that may be far below its as-if-unrestricted appraised value?[57]

Assessing Resale-restricted Homes

Although there are still many assessors who take little or no account of the special circumstances of the CLT "deal" in assigning values and levying property taxes, an increasing number of state and municipal officials have come to recognize that taxing resale-restricted homes at their unrestricted, market value is contrary to the community's interest in creating affordable homeownership opportunities. Even among these latter jurisdictions, however, there is great variation in how reduced assessments are calculated. In **Boulder County CO**, and **Los Angeles County CA,** for example, the assessed value of CLT homes when they are first placed on the local tax rolls is the (heavily subsidized) price that is paid by lower-income households in purchasing these homes from the CLT. This is true in **Berkeley CA** and in **Highland Park IL** as well, where the resale-restricted homes of the Northern California CLT and the Highland Park CLT are valued and taxed on the basis of their actual sales price. In **Orange County NC**, by contrast, the assessor typically values CLT properties at about $10,000 more than the initial purchase price, but provides no specific formula for this calculation. In **Burlington VT,** the assessed value

[57] There may be times and places, however, where a CLT home resells for its ***appraised*** value, since most CLT resale formulas stipulate a resale price that is ***either*** the formula-determined price or the appraised value of the home, whichever is lower.

of the owner-occupied homes in the Champlain Housing Trust's portfolio is reduced by 37% from the market value of a similar structure.[58]

Moraine Township, Illinois

Moraine Township levies taxes on properties developed by the Highland Park CLT. The Township recognizes that the market value of CLT lands and homes is significantly affected by the restrictions. The official assessment policy states that "The Moraine Township Assessor has acknowledged that affordable properties with resale control mechanisms . . . are not comparable to market rate properties in the community due to the resale restrictions placed on these properties to maintain affordability. Therefore, they should be assessed at a level that reflects their actual market value, which is much lower than what their market value would be without the resale restrictions. It is the established policy of the Moraine Township Assessor that these properties are assessed based upon the net sales price of the homes to the homebuyers."

Assessing Leased Land

Separately from the taxation of CLT homes, there is a question of how the CLT's land should be valued and taxed. Most CLTs enter into a ground lease that is both long-term and automatically renewable at the homeowner's discretion, a lease that severely limits the CLT's ability to change the use of its land or to collect significant income from it. Most CLTs charge a nominal fee for the use of their land. Indeed, in most housing markets, the lease fee charged by a CLT tends to be far below what a market-rate rent would be. This is a conscious decision of the CLT, motivated by the organization's charitable mission of serving lower-income people who could not afford to pay a higher fee for the land beneath their homes.[59]

Taking into account the current (and enduring) use of the CLTs leased land and the below-market revenues the CLT can derive from its land, local assessors in many jurisdictions have calculated a value for a CLT's land that is considerably less than its unrestricted market value. In **Delray Beach FL**, for example, the assessor has determined that the land underneath the resale-restricted homes of the Delray Beach CLT has no value at all because it has been turned over indefinitely to CLT homeowners for no more than a modest lease fee.[60] More commonly, assessors see the land as having some resid-

[58] Instead of assessing the resale restrictions of each CLT home individually, the assessor calculated the ***average*** difference between the formula-determined selling price of the CHT's houses and condominiums and the selling price of similar homes being sold on the open market.

[59] The model CLT ground lease describes a two-step process for setting the lease fee. "First an amount approximating the monthly fair rental value of the Leased Premises has been established. . . . Then the affordability of this monthly amount for the Lessee has been analyzed and, if necessary, the amount has been reduced . . . to be affordable for the Lessee." This recognition in the lease that the market value of the premises is reduced by the restrictions imposed by the lease supports the CLT's right to charge a higher lease fee if affordability restrictions and eligibility requirements are removed, as can happen in foreclosure.

[60] The local assessor in **Delray Beach** made this determination, incidentally, prior to enactment of a 2008 amendment to Florida's tax code (Section 196.1978) which extends ad valorem tax exemption to "land that

ual value, but a value that is greatly reduced by the manner in which it is leased. One common approach is to value the property based on the stream of income that it produces for the CLT. In **Madison WI,** the land under single family CLT homes is capped at a flat value of $18,000, the approximate Net Present Value of the monthly ground lease fees over the 99-year term. In **Multnomah County OR** the tax assessor considers the Net Present Value of ground lease payments for each individual parcel held by the Portland Community Land Trust that is perpetually leased to lower income households at a below-market price. Assessments of the land increase only if the monthly ground lease fee increases.

Increasing the Valuation of Resale-restricted Homes

Another concern for the CLT is the rate of increase in the assessed value of its leaseholders' homes. A CLT home that was ***made*** more affordable by the municipality's subsidy and ***kept*** more affordable by the CLT's resale restrictions can become steadily ***less*** affordable if the municipality's tax bill rises too steeply.

In the best of worlds, there would be no difference between the municipality's rationale and methodology for determining the taxable value of resale-restricted homes when they are first entered on the grand list and the rationale and methodology when the same homes are reassessed in later years. At both points in time, the calculation of value should be based on the actual price for which these homes may be legally sold. Such consistency is not always the rule in the real world of CLTs, however. In **Delray Beach FL**, for example, the initial assessment of CLT homes is based on the affordable sales price, but the assessment of these homes increases at the same rate as all other properties in the locale. Eventually, the CLT's homeowners will be paying taxes on values far above their restricted resale prices.

Many other tax assessors recognize, however, that CLT homes will appreciate at a slower rate than comparable market-rate homes because of use and resale restrictions that are embedded in the CLT ground lease. They adjust the rate of increase in the property's assessment, therefore, to reflect the gradual growth in the property's price that is allowed by the CLT's resale formula. The assessor in **Boulder County CO**, for example, taxes the resale-restricted, owner-occupied homes of its local CLT, Thistle Community Housing, according to the current price that each home would fetch were it offered for sale under the terms stipulated by Thistle's ground lease. Thistle calculates this formula-determined resale price for every home in its portfolio on an annual basis and submits these figures to the county assessor. Dudley Neighbors, Inc has negotiated a similar arrangement with the tax assessor in **Boston MA**. A variation of this approach is used by the assessor in **Madison WI**. After studying the resale formula used by the Madison Area Community Land Trust, which allows the owner of a CLT home to pocket 25% of the home's appreciation on resale, the city assessor decided these homes should be entered on the tax rolls at the price for which they were initially purchased by a first-time

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is owned by an exempt entity and that is subject to a 99 year or longer ground lease for the purpose of providing affordable homeownership".

homebuyer and this baseline assessment should be adjusted annually at a rate equal to 25% of the appreciation of comparable market-rate homes.

Taxation of Resale-Restricted Housing in New Jersey

In the 1989 case of Prowitz v. Ridgefield Park Village (568 A.2d 114) the New Jersey Appellate Court upheld the lower taxation of resale-encumbered property, stating: "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."

Although long-term control over the resale price was imposed by a deed restriction instead of a ground lease in a New Jersey case, the court's reasoning is "on point" for the taxation of CLT homes. 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.

Balancing Concerns of the Municipality and CLT

Municipalities have an interest in maximizing revenues from property taxes. A growing number of cities, counties, and towns are also insisting, however, that owner-occupied housing that is made affordable using the municipality's dollars or powers must remain affordable for many years. Since property taxes can erode affordability when they are pegged to a property's market value instead of its affordable price, a municipality committed to lasting affordability must make a choice: either increase the level of its own subsidies, giving out with one municipal hand while taking back with another, or adjust its assessment of resale-restricted homes – not removing property from the tax rolls, but recognizing what the New Jersey Appellate Court once called the "patent burden on the value of the property."

CLTs and local taxing authorities have been working together to negotiate assessments that allow the jurisdiction to collect a fair level of property taxes to support the services provided by local governments without undermining the initial and continuing affordability of the CLT's homes. Achieving a fair assessment of CLT lands and resale-restricted homes can be a challenging and protracted process, however. Local assessors are sometimes unsure of what is permissible under state law, so conservatively decide they are unable to accommodate the special circumstances of the CLT's treatment of land and housing. Other assessors, with or without state guidance, labor mightily to consider the impact of long-term land leasing, lower lease fees, and durable resale restrictions and

come up with very different methods for valuing and taxing CLT lands and CLT homes in their communities.

> Municipal Concern: Municipalities have an interest in protecting their tax base, ensuring that all homeowners pay their fair share of local property taxes.
>
> CLT Concern: CLTs have an interest in protecting the affordability of their homes, ensuring that low-income homeowners pay property taxes that take into account the long-term resale restrictions on their property.

Worst Practice: No Adjustment for the Encumbered Value of CLT Homes

There is no attempt at balancing the competing concerns of the municipality and the CLT when a municipal assessor systematically ignores the "patent burden on the value" of lands and buildings under a CLT's stewardship. Although fewer now than in the recent past, there are still many assessors who look at a CLT home selling for $100,000, despite being appraised for twice that amount, and proceed to enter that home on the local tax rolls at a value of $200,000. There are assessors who look at a parcel of CLT land leased by a low-income homeowner for 99 years at $25 per month, despite being worth four times as much, and proceed to enter that land on the local tax rolls at a value reflecting a market-rate rent of $200 per month. There are assessors who look at the contractual restrictions encumbering the resale and subletting of a CLT home and proceed to increase the value of that home at a rate of appreciation equal to that of a market-rate home without these encumbrances. The worst practice is to force CLT homeowners to pay taxes on property values that will never be theirs.

Worst Practice: Unpredictable Adjustments

Even when assessors acknowledge "the patent burden on the value" of leased lands and resale-restricted homes in a CLT's portfolio, there must be a clear and consistent strategy for quantifying this "burden." While any downward adjustment in the assessed value of a CLT's property is going to be welcome, since it eases the tax burden borne by a CLT's low-income homeowners, such adjustments must be based on a defensible rationale and systematic methodology. A CLT needs to be able to predict how any newly developed housing will be valued by the local assessor in order to factor the cost of property taxes into its affordability calculations in pricing, financing, and selling its resale-restricted homes.[61] A CLT's homeowners need to anticipate how their taxes are likely to rise over

[61] For example, the resale-restricted condominiums in the portfolio of the Orange Community Housing and Land Trust are assessed at less than their full market value by the Town of **Chapel Hill NC**. OCHLT staff gratefully acknowledge that this reduced rate is both beneficial and welcome. These reductions have been granted on a case-by-case basis, however, with little understanding on OCHLT's part as to the formula used by the local assessor in determining the taxable value of the CLT's homes. This creates an uncomfortable level of unpredictability when OCHLT is developing a project and selling homes. As one staffer put it: "we would love for there to be a formula so that we could tell people and explain it to people" before they are asked to buy a resale-restricted home.

time. A jurisdiction's taxpayers and policy makers need to understand why it is reasonable, legal, and fair for a resale-restricted home on land that is leased for a below-market rent from a CLT to be taxed at a lower rate than a comparable market-rate home. Case-by-case adjustments, based on calculations and criteria understood by the assessor alone, are almost as bad as no adjustments at all.

Best Practice: Fair Taxation Based on Restricted Values

There are a number of strategies and methodologies for equitably taxing a CLT's lands and homes for balancing the concerns of both the municipality and the CLT, of the best practice is to assess the CLT land based on the income stream from ground lease fees, to assess the homes based on the initial below market price to the homebuyer and to increase that assessment no faster than the rate of increase in the formula resale price.

- ***Value of the Homes:*** The assessed value of any buildings that are located on the CLT's land should reflect the perpetual restrictions that the CLT's ground lease has imposed on the use and resale value of these buildings. Thus, the building's assessed value should be lower than the assessed value of a similar building that is not so encumbered. Because it is unlikely that a reasonable person would ever pay more than the CLT's affordable formula price for a restricted unit, this formula price is generally the best indicator of the "fair value" of a CLT home.

- ***Value the Land:*** The assessed value of the CLT's land should never be more than 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. Given that the ground lease fees are usually far below a market rent, the value of CLT land should be far below its market value. This valuation should only increase as the ground lease payments increase.

- ***Rate of Increase:*** The formula-determined price of a CLT home, under most resale formulas and under most market conditions, tends to rise on a trajectory that is lower and flatter than the trajectory followed by market-priced homes without resale controls. Post-purchase adjustments to the assessments and taxes of CLT homes should take these long-lasting controls into account. Ideally, tax assessors should calculate the maximum price for which a CLT home could sell, based on the resale formula appearing in the home's ground lease, and adjust the home's assessed value accordingly.

Taxation of Resale-Restricted Housing in Vermont

In 2008, the Vermont Department of Taxes issued Technical Bulletin 41 (TB-41), recommending a "uniform approach for determining the listed value of owner-occupied homes subject to perpetual resale restrictions." Although the specific methodology proposed for calculating the value of such resale-restricted housing was needlessly complex, its underlying rationale was quite straightforward. In the Bulletin's words: "These homes remain affordable to future buyers because the owner's resale price is restricted and public grants that assist buyers in purchasing the properties remain with the property, thereby reducing the price of the property for a subsequent buyer(s). . . . The Department interprets Vermont law to require municipalities to list these properties at a value that reflects the restricted equity that the owner of such property has upon resale."

Best Practice: Fair Taxation Based on Reasonable Tests

The guidance given to local assessors in the valuation and taxation of resale-restricted housing varies greatly from state to state. The question of whether resale-restrictions impose a "patent burden on the value of the property" has sometimes been settled by a state court, sometimes by a state legislature, and sometimes by a state board of equalization. More often, it has been left to local assessors to decide for themselves ***whether*** to recognize the affordability restrictions contained in the ground leases of a CLT or in the deed covenants used by other forms of shared equity housing and to decide ***what*** the encumbered value of these homes should be. Across the country, these decisions have rested on a series of "tests" of eligibility for a decrease in value that most CLTs have been able to pass. The most reasonable of these tests, either imposed on local assessors by their respective states or invoked by local assessors in exercising the discretion granted to them by their respective states, are the six that follow.

> ***Diminished return***: the monetary return that the owner can derive from a parcel of real property must be significantly reduced as a result of the contractual restrictions that encumber the property. This should be an easy test for a CLT and its homeowners to meet. The CLT's ability to realize market-rate returns from leasing its lands is limited by the long-term leases it has signed with its lessees and the homeowners' ability to realize market-rate returns from subletting or reselling their homes is limited by the same lease.
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> ***Duration***: affordability controls cannot be "impermanent"; they must endure for many years.[62] The 99-year term of the typical ground lease, restricting returns to the landowner and the homeowner alike, should easily enable a CLT to meet this test.

[62] Different states have adopted different standards in deciding when the duration is "long enough" to qualify for a lower assessment. For example, Vermont expects restrictions to last for 99 years. In New Jersey, a 30-year restriction is "long enough."

Irrevocability: affordability controls must irrevocably bind both current and future owners and must have a high likelihood of remaining in force during the entire control period. Most CLT's should be able to pass this test. Except in the case of foreclosure, where affordability controls may be terminated, the CLT's restrictions over use and resale are likely to remain binding and enforceable for the entire term of the lease.[63]

Disclosure: affordability controls must be disclosed to the prospective buyers of a resale-restricted home; they must fully understand and freely accept these controls as a condition of purchase.[64] CLTs that do a careful job of orienting and preparing would-be homebuyers for the purchase of a CLT home should have no trouble passing this test.

Recording: affordability controls must be embedded in covenants, ground leases, or other contractual documents that are recorded in the local land records. Since most CLTs record a long form or short form of their ground lease for every home in their portfolio, this test is usually met.

Public benefit: the affordability controls must benefit the public. As the NJ Appellate Court put it in the *Prowitz* case: "It is not a potential benefit to any specific affordable housing owner with which the resale restriction is concerned, but the benefit to the public that is vouchsafed by indefinitely maintaining that unit in the affordable housing stock." To the extent that either state policy or municipal policy has explicitly recognized the economic and social importance of maintaining a stock of affordably-priced housing for persons of modest means, a CLT should have no difficulty passing the test of public benefit. The same should be true in jurisdictions where resale controls have had a public ***genesis*** – that is, where such controls are required by a public agency or imposed by a public agency. Only in jurisdictions where public policy and public practice do not favor the preservation of affordability should CLTs have to work harder to convince local assessors that resale controls provide a lasting benefit for the public at large.[65]

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[63] Should foreclosure result in the home being resold by the lender for its full market price – and should the CLT then begin charging a full market rent for the underlying land, which is permitted under the model ground lease – the home and the land would both be reassessed, allowing the municipality to collect taxes commensurate with the property's unrestricted market value.

[64] In the Massachusetts tax case of *Truehart v. Montegue Assessors* (Appellate Tax Board Docket Nos. 198055-57, April 21, 1999), disclosure was part of the Tax Board's rationale for ruling that resale restrictions must be considered in arriving at the "fair cash value" of homes to which the Massachusetts Housing Finance Agency had attached affordability covenants: "A willing, informed buyer of the subject properties is presumed to know that he or she must grant MHFA a right of first refusal and that he or she will be limited to a maximum resale price based on the discount rate applicable to the property."

[65] The State of New York, through its Office of Real Property Services, has made the opposite argument in ORPS Opinions 10-34, characterizing resale restrictions as a "private benefit." Because the homeowner personally benefits from the use of a resale-restricted home and because the homeowner has realized a personal "windfall" in purchasing a home for at a below-market price made possible by public subsidies, ORPS asserts that most of the benefits derived from restricting a home's resale price are derived by the home's owner. Furthermore, the owner *chose* to buy the home, voluntarily accepting the resale controls encumbering it. These restrictions are "personal to the owner," in the opinion of ORPS, not a benefit to the public. Courts, tax departments, and boards of tax equalization in a number of other states have reached the

opposite conclusion, agreeing with the *Prowitz* decision that resale controls are "clearly designed to secure a ***public*** benefit of overriding social and economic importance."

Regulating the Program: Municipal Oversight of CLT Activities

Maintaining a stock of affordable homes in good repair, while preserving the owner-occupancy and continuing affordability of these homes over a span of many years, cannot happen without a significant commitment on the part of some outside party to make sure this happens. "Self-enforcing" controls over the use and resale of owner-occupied housing have proven in practice to be wishful thinking. Someone has to monitor and enforce them. Someone has to be the long-term ***steward*** of affordably-priced homes that a municipality has helped to create.[66] A number of municipalities have turned to a CLT to play this role, relieving local government of the administrative burden of monitoring and enforcing durable controls that the municipality has required as a condition of its support.

When the CLT is doing its job, the workload of the municipality is reduced, yet the municipality still has a role to play. Accountable to its own taxpayers and accountable, perhaps, to various federal or state agencies from which it initially acquired discretionary funds that were subsequently invested in the CLT, a municipality must ensure that the CLT is performing as promised. It is the municipality's responsibility to "watch the watcher," making sure that the CLT is a capable and diligent steward of the resale-restricted, owner-occupied housing in its own portfolio. In extreme cases, the municipality may need to remind the CLT of its responsibilities – or take legal action to compel the CLT to perform as promised. Under normal conditions, however, municipalities can assume a more hand-offs posture, leaving the routine tasks of monitoring and enforcing the use and resale restrictions on a CLT's homes to the CLT.

Menu of Municipal Oversight

When a local government gives project support or operating support to a CLT, a grant agreement or loan agreement is nearly always executed between the parties, specifying the CLT's responsibilities or "performance requirements." Every municipality has its own list of requirements for how a CLT should perform in exchange for this support, a list that is short or long, general or specific, flexible or rigid, varying greatly from one jurisdiction to another[67]. The CLT responsibilities most commonly subject to municipal oversight include the following, although it is the rare grant agreement or loan agreement that speaks specifically to all of them.

- Developing CLT homes

[66] A more detailed description of the responsibilities that a municipality – or its designee – must perform if publicly-assisted, owner-occupied housing is to remain affordable for many years can be found in Rick Jacobus, "Stewardship for Lasting Affordability: Administration and Monitoring of Shared Equity Homeownership," Paper presented at the NeighborWorks Symposium on *Taking Shared Equity to Scale*, Portland, OR, December 12, 2007.

[67] In communities where a CLT is one of several organizations receiving municipal support to produce affordable ownership housing, the CLT should not be burdened with more extensive regulations than other recipients of a municipality's housing assistance simply because the CLT proposes to maintain affordability for a longer period of time.

- Marketing CLT homes
- Selecting homebuyers
- Initial pricing of CLT homes
- Maintaining the affordability of CLT homes
- Monitoring Homeowner Compliance with the Ground Lease
- Promoting the Maintenance of CLT Homes
- Preventing Foreclosures

Developing CLT Homes

Some CLTs act as the developer of housing brought into their portfolio, while others play only a stewardship role for housing developed by another nonprofit or for-profit corporation. The CLT's role in project development may include coordinating site acquisition, securing planning approvals and building permits, participating in designing the project, obtaining construction financing, and/or overseeing actual construction of the project. The municipality might require the CLT to perform any number of these development tasks, as a condition of receiving municipal support.[68]

Marketing CLT Homes

Cities, counties, and towns that invest in a CLT's homeownership projects have a responsibility to ensure that all income-eligible citizens have an equal chance of learning about the availability of these publicly-assisted homes and an equal opportunity to apply for the purchase of one. These homes must be marketed in an open and transparent way in compliance with federal, state, and local fair housing laws.

Fair Housing vs. Affirmative Fair Marketing

Fair marketing means marketing a unit in a way that ensures that all prospective home buyers have an equal opportunity to learn about available homes regardless of their race, religion, age, gender, or sexual orientation. In many areas, an ad in the local paper might achieve this goal.

Affirmative fair marketing goes a step further by making a special effort to reach out to certain categories of potential buyers who are least likely to hear about a project, attempting to generate a pool of applicants that is representative of the broader population of eligible households. Affirmative fair marketing is required for most HUD-funded projects.

[68] These requirements are no different for a CLT than for any other developer of affordable housing who is receiving assistance from the municipality. For that reason, they are not described in detail in the current chapter.

Details on these federal requirements can be found at:
www.hud.gov/offices/cpd/affordablehousing/training/web/crosscutting/equalaccess/marketing.cfm

To monitor compliance with fair marketing requirements, some municipalities require CLTs to provide an annual report that describes the marketing strategies of the CLT and the demographics of the households buying CLT homes. Other municipalities do not require annual reporting, but they do require the CLT to maintain records of its marketing efforts, records that the municipality may review at any time. A number of cities, including **Berkeley CA,** require the CLT to submit an affirmative fair marketing plan for the City's approval for each and every project receiving city support. Other cities, like **Boulder CO** and **Albuquerque NM,** allow the CLT to submit a general plan for affirmatively marketing all of its housing, which is reviewed and approved by a city and then applied by the CLT to every publicly-assisted project that it later develops.

Selecting Prospective Homebuyers

After marketing its homes, a CLT must screen all applicants for eligibility and then decide which of these eligible applicants will be offered the opportunity to purchase CLT homes. Some municipalities manage this process almost entirely within local government, but most rely on the CLT to carry out the screening and selection of prospective homebuyers.

It is common for CLTs to have a two-tiered system of *threshold criteria* and *priority criteria*. Applicants must first meet certain threshold criteria like household income to be admitted into the pool of prospective homebuyers. Having met these threshold criteria for eligibility, applicants are then screened against a set of supplementary priorities established by the municipality and the CLT. An income-eligible household who is already a resident of the CLT's service area, for example, might be given priority in purchasing a CLT home over an income-eligible household who presently reside outside this service area[69]. It is important for the municipality and the CLT to establish such selection criteria well in advance of a project's completion and to distinguish clearly between threshold criteria and supplementary priorities. Common examples of both appear below:

Common threshold criteria:

- Majority Age: The head of household must be at least 18 years old.
- Legal Residency: Applicants must be legal residents of the United States.
- Maximum Income: A household must earn an annual income that does not exceed some specified percentage of the area median income earned by households of equal size.

[69] This kind of local preference has been found to violate fair housing guidelines when it has the indirect effect of making it more difficult for members of various minority groups to access housing opportunities. A municipality should consult with an attorney with fair housing experience before implementing a local residency preference.

- Minimum Income/ Maximum Debt Burden: A household's monthly income must also be sufficient to support the housing costs for the home in question.
- Creditworthiness: Applicants should be able to demonstrate a history of responsible efforts to meet its financial obligations.
- Mortgage Readiness: Some programs require that an applicant "pre-qualify" for mortgage financing.
- Asset Limits: Some programs also impose asset limits that prevent applicants with low incomes but high net wealth from being eligible.
- First-time Homebuyers: Many programs require that applicants be first-time buyers, typically defined as someone who has not owned a principal residence in the past three years.
- Appropriate Size: Most programs set some limits that prevent single individuals from purchasing units that could house a larger family or discourage larger families from purchasing units too small to house them appropriately.
- Down Payment: Each applicant should have funds available for the down payment, if required.
- Participation in Homebuyer Education: Many programs require all buyers to complete some level of pre-purchase homebuyer education. CLTs often include education about the ground lease and resale price restrictions in these workshops and require applicants to participate prior to selection.

Common supplementary priorities/secondary criteria:

- **Displacement**: Many programs require that households that have been displaced from their housing in the course of developing a project receive first priority for any new units created.
- **Disability**: In some projects, certain units are designed to meet the accessibility needs of people with disabilities and these units are frequently offered first to applicants with the appropriate special needs.
- **Need:** Some projects provide for priority for lower-income households applying for a given housing unit.
- **Local Residency**: Many programs offer priority to residents of the community within which the housing unit is located. (These preferences must be designed carefully to comply with fair housing laws and are generally not allowed in projects that receive Federal HOME funds.)
- **Local Employment:** People who are employed by businesses located in the community (or have remained employed in the area for a minimum period of time) can be offered a priority.
- **Occupation/employer:** Some programs provide preference for members of certain occupations or employees of certain institutions.
- **Existing Owners of Affordable Homes:** Existing Land Trust home owners in need of more or less space or needing to relocate might be given special consideration.

Not all selection criteria are imposed by a municipality. Federal and state funding sources often specify many of these criteria in detail – and may even conflict in their re-

quirements. Local governments can impose their own criteria on top of (or in the absence of) the requirements of other funders. In addition, CLTs will sometimes add requirements of their own. While it is tempting for local government to adopt a single set of detailed selection policies to cover every ownership project, this may not always be possible. What is important is that the criteria for each project be spelled out in writing and agreed to by all relevant parties before marketing begins.

Most CLT practitioners and municipal officials who were interviewed for this report indicated that the only requirements imposed by their local governments were related to income-eligibility, including maximum household income and maximum debt- to-income ratios. A few municipalities also require a household to be a first-time homeowner to qualify for a CLT home. Some impose a preference for applicants who currently live or work in their jurisdiction.

Local governments often require a CLT to submit its selection criteria to the municipality for review and approval. Municipal staff want to be involved enough in the process that they can vouch for the basic fairness of the selection process. In some cases, the municipality may provide an appeal process for applicants who believe they have been treated unfairly. After approving the selection criteria, most local governments rely on the CLT to verify that applicants meet those criteria. Some require the CLT to provide documentation to the jurisdiction, verifying that selected buyers are eligible prior to closing. More often, municipalities require CLTs to provide annual reports on the process and outcome of selecting homebuyers. Such reports typically include such elements as:

- The number of applicants,
- The demographic distribution of applicants (age, race, household size, etc)
- The demographic distribution of those selected
- A description of the process used
- A description of any complaints and their resolution

In either case, the municipality is relying primarily on the CLT to perform the bulk of the work in screening and selecting buyers for the resale-restricted homes that the municipality may have helped to fund. This includes the collection of supporting documentation from all applicants, proving that CLT homes are only being sold to persons who meet the eligibility criteria set by the project's funders and by the CLT.[70]

Highland Park CLT
Highland Park, Illinois

The Highland Park Community Land Trust has a close working relationship with the city government. CLT program guidelines, including the organizational marketing plan and homebuyer eligibility requirements, were developed by the city-appointed task force that

[70] The time that it takes to market CLT homes and to screen and select eligible buyers for these homes can vary greatly from one locality to another – even from one project to another within the same locale. Such variability is more a result of pricing and demand for the products being offered for sale than of the process used by different CLTs in selecting the buyers.

laid the groundwork for the CLT. These draft guidelines were then presented to the City of Highland Park for review and approval.

HPICLT employs a program-wide marketing plan which was approved by both the local government and by a fair housing lawyer. Additionally, the local HOME consortia (Lake County Consortia), includes a one-page appendix to housing subsidy contracts that outlines the Affirmative Fair Marketing requirements. This appendix not only reviews the basic federal requirements, but also identifies specific local agencies and organizations which must be provided notice of housing opportunities. It also requires that HPICLT maintain specific files which record affirmative marketing efforts and can be audited by government representatives.

Homebuyer selection is determined by a two-tier process. Threshold criteria include:

- Income eligibility, the maximum for all projects is 115% of AMI, but some may have a lower-income threshold depending on funding sources
- Asset limits
- Creditworthiness and mortgage qualification from an approved lender
- Citizenship or legal alien status
- Size of the household must be appropriate for the unit

Priority in being selected off the waiting list of eligible applicants is given to those eligible applicants who:

- Live or work in Highland Park;
- Earn less than 80% of AMI; or
- Contribute property to the Affordable Housing Inventory (– i.e., if an owner sells or contracts to sell property to HPICLT, then, with board approval, he or she may be given priority in purchasing a newly-constructed CLT home).

All prospective homebuyers must complete a homebuyer education course, including the orientation offered by HPICLT and the pre-purchase counseling program offered by Lake County, if a 1st time homebuyer.

Initial Pricing of CLT Homes

The price of a CLT home determines its affordability. In some cases, the municipality determines the prices of the CLT homes, but more often the CLT calculates unit prices to meet the affordability requirements of several different funding sources.

An affordable price is one which does not require households within a targeted income range to spend more than some specified percentage of the household's monthly income on total housing costs.[71] For example, a program in which buyers were required to earn 80% of area median income or less might price units so that potential buyers earning 70% of AMI would pay no more than 30% of their income for their housing costs. While buyers earning up to 80% of AMI would be allowed, pricing to a slightly lower level means that the unit will be affordable to a range of potential buyers rather than only to those

earning exactly the maximum allowable income. To calculate the affordable price a program must determine an appropriate percentage of income and identify which housing costs will be included in the calculation. Although 30% of monthly household income is the percentage used most widely, some municipalities consider prices which require a household to spend up to 38% of annual income to be "affordable." Total housing costs typically include not only the monthly mortgage payment, but also the monthly cost of property taxes, insurance costs, condominium or homeowner association fees, and the CLT's own lease fee. A few municipalities also require utility costs to be factored into total housing costs.

A majority of the CLT practitioners interviewed for this report said their local governments expected the CLT to set the initial price of each unit consistent with affordability requirements set by the municipality. Some cities, such as **Bellingham WA,** review the transaction prior to closing to ensure that the home will be sold at an affordable price. Other cities, such as **Madison WI,** calculate their own maximum price limits for all affordable ownership units and require the CLT to sell homes for no more than those limits. The Madison Area CLT reports that they price their units internally and their units are always well below the city maximum.

Maintaining Affordability of CLT Homes at Resale

CLTs adopt a resale formula that allows home prices to rise at a modest rate, maintaining affordability of these homes for a targeted population of low-income or moderate-income homebuyers. There are several options for designing this resale formula, but evaluating the pros and cons of each is beyond the scope of the present report[72]. Whichever formula is selected, it is clearly spelled out in the CLT's ground lease. Occasionally, the resale formula is also delineated in the municipality's loan or grant agreements. More commonly, however, these documents make only passing reference to the resale restrictions contained in the ground lease.

It is important for municipal officials to review, comprehend, and consent to the resale formula contained in the CLT's ground lease. On occasion, they may become involved in designing or amending that formula to ensure its consistency with the municipality's own housing programs or goals. In **Sarasota FL**, for example, the CLT's Board of Directors met several times with consultants to discuss several alternative formulas before selecting a resale pricing formula which they believed could meet the community's needs. This formula was then presented to the local government for its approval. In **Chicago IL**, where municipal officials played the lead role in establishing the Chicago CLT, the commissioner and senior staff from the Department of Housing were actively involved in deciding which resale formula the new CLT would adopt.

[72] The CLT Resource Center, posted on the website of Burlington Associates, includes a number of tools to help communities select an appropriate resale pricing formula. *See* www.burlingtonassociates.com/resources. Detailed discussions of designing a resale formula can be found in: Institute for Community Economics, *The Community Land Trust Legal Manual*, Springfield, MA: ICE (2002) and in John Emmeus Davis, *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, Montclair, NJ: National Housing Institute, 2006.

Local governments vary in the degree that they actively participate in monitoring resales at the time of transfer. Most municipalities, including **Orange County NC** and **Burlington VT**, do not involve themselves in the day-to-day business of reviewing resales, but they reserve the right to audit the CLT's files to verify that all buyers are income-eligible. At the other extreme, a few municipalities like Bellingham WA and Chapel Hill NC insist on reviewing every resale to ensure that promised affordability goals are being achieved but this requires the municipality to maintain the staff capacity and internal systems to ensure a timely response. The City of **Bellingham WA** relies on the Kulshan CLT to collect documentation verifying the applicant's household income and city staff then reviews and approves each homebuyer prior to closing. The Town of **Chapel Hill NC** relies on the Orange Community Housing and Land Trust to calculate the resale price of a CLT home, but then requires this price to be approved by municipal staff prior to sale. Other cities, such as **Portland OR** and **Boulder CO,** take a middle course. They do not review and approve the eligibility of each applicant prior to the resale of a CLT home, nor do they approve each resale price. Rather they require the CLT to provide an annual report documenting the income of each buyer and the formula-determined resale price after the fact. Similarly, the City of **Minneapolis MN** requires the City of Lakes CLT to submit an annual report describing Low Income Unit sales, resales, buyer demographics and other information requested by the City.

Monitoring and Enforcing Homeowner Compliance with the CLT Lease

One of the advantages of working with a CLT, from a municipality's perspective, is that CLT employees rather than municipal employees assume long-term responsibility for monitoring and enforcing the municipality's requirements for the continuing occupancy and affordability of publicly-assisted, privately-owned homes. Handing off this responsibility to the CLT, municipal officials are less likely to retain a direct relationship with the owner-occupants of these resale-restricted homes. The municipality can still regulate the CLT's homeowners ***indirectly,*** however, through its review of the CLT ground lease and through its oversight of the CLT itself.

CLT ground leases contain restrictions and requirements designed to ensure that homes are used in ways that are consistent with the goals of a municipality's affordable homeownership program, including prohibitions on absentee ownership, restrictions on subletting, and requirements for complying with local zoning and building codes, maintaining adequate property insurance, and keeping the home properly maintained. Some of these restrictions are unique to the CLT, but most are the same kinds of requirements that a local government would typically impose on any homebuyer receiving municipal assistance. It behooves a municipality to review both the ground lease a CLT proposes to use in any project subsidized with municipal funds and the CLT's capacity to monitor and enforce its homeowners' compliance with the terms of that lease.

All CLT ground leases specify the conditions under which a homeowner may be declared in default of the lease by the CLT, as well as the process the CLT must follow in either compelling the homeowner to cure the default, curing the default itself, or terminating the

lease. The principal grounds for default spelled out in most ground leases are the following:

- Failure to pay the monthly ground lease fee
- Failure to occupy the unit as a primary residence
- Sale or attempted sale of the unit to an ineligible household or selling for more than the formula price
- Failure to maintain the unit
- Failure to pay property taxes
- Failure to carry sufficient property insurance

The CLT ground lease becomes the primary contractual tool for ensuring homeowner performance. In most cases, homeowners who violate the terms of their ground lease move quickly to remedy the situation once the CLT notifies them of the violation. When homeowners do not act to cure these violations, however, the CLT has several enforcement options, including:

> **Right to Charge Additional Ground Rent**: When homeowners fail to pay insurance, taxes, homeowner association fees or other special assessments, the ground lease can give the CLT the right to make such payments on their behalf and to bill the homeowner. These charges can be treated as "additional rent" under the terms of the lease and, ultimately, can be withheld from the homeowner's equity from the resale of the home or can be reimbursed out of the proceeds from foreclosure[73].
>
> **Right to Terminate Lease:** Homeowners who have violated a provision of the ground lease and do not correct the problem within a reasonable period of time, could have their lease terminated. Termination of the ground lease ends a homeowner's right to occupy the CLT's land. Termination is hardly the preferred course of action for a CLT, of course, but this endgame option usually gives the CLT sufficient leverage to compel compliance. It is worth noting that most mortgage lenders consider a default under the ground lease to be a violation of the mortgage as well. The model CLT ground lease requires the CLT to delay termination of the ground lease long enough for the mortgage lender to pursue foreclosure first.

Maintaining CLT Homes

For permanently affordable homes to continue to meet the housing needs of future generations of homeowners, these units must be properly maintained over time and perhaps improved periodically to keep up with changing standards. But there is no evidence to support the proposition that homeowners in resale-restricted housing do a poorer job of maintaining their housing. When maintenance problems go unresolved, it is usually because of the limited and precarious income of the owners, not the limited-equity restric-

[73] Many CLT leases contain this type of provision. Unfortunately, the 2002 model CLT lease does not allow CLTs to treat insurance and homeowner association fees in this way. Future versions of the CLT model lease will include this provision.

tions on the owners' homes. This is not a problem confined to CLT housing. A recent study by NeighborWorks America found that low-income and moderate-income owners of ***market-rate*** homes, purchased with the assistance of a NeighborWorks affiliate, had serious maintenance issues. Among these first-time homeowners, 56% had encountered maintenance problems that were unexpected, but nearly half of these owners of market-rate homes were unable to make the necessary repairs, even when roofs and foundations needed major improvements.[74]

The municipality has a real interest in making sure that homes are maintained over time and some specifically require that the CLT take steps to ensure that the properties are adequately maintained. A CLT can play four important roles in helping to promote proper maintenance:

1. **Educating homeowners about maintenance**: Many CLTs offer workshops and print material to educate first-time homeowners about making simple repairs and performing ongoing maintenance on their homes. Some offer home maintenance schedules customized to the type of homes that the CLT sells.

2. **Monitoring and enforcement of maintenance provisions in the ground lease**: CLT ground leases generally require homeowners to maintain their homes and to comply with local building and health and safety codes. Homeowners who violate these provisions can be forced to make repairs or through eviction or threat of eviction can be forced to sell their homes. However, most CLTs have chosen not to perform regular inspections of individual homes because owners often feel that this violates their right to privacy.

3. **Facilitating financing of maintenance and improvements**: The CLT can also work with local lenders to ensure that CLT homeowners have access to home equity loans and lines of credit to pay for maintenance and improvements. While owners can only accumulate mortgage debt up to their limited resale price, many (though not all) CLT resale pricing formulas allow homeowners to receive an increased resale price to reflect significant improvements that the homeowner has made with prior approval from the CLT.

4. **Coordinating rehabilitation at resale, if necessary**: While most owners will take appropriate steps to maintain their homes, it is inevitable that some units that come up for resale will require significant rehabilitation. In these cases, the CLTs can step in at the time of resale and coordinate renovations or upgrades as part of the resale process. The CLT will generally perform a physical inspection as soon as a homeowner notifies the CLT of their desire to sell their home. When a unit has suffered from deferred maintenance, the CLT's resale formula may allow it to deduct the cost of repairs from the proceeds due to the seller. Other times, older units have been well maintained but are simply dated and in need of improvement and the CLT may perform the needed work and increase the sales

[74] Saegert, S., F. Justa, et al. (2005). Successes of Homeowner Education and Emerging Chal-lenges. New York, Housing Environments Research Group, Center for Human Environments, City University of New York Graduate Center.

price to the new buyer. In either situation, the CLT plays an important role balancing the need for ongoing investment in the building against the need to ensure ongoing affordability.

With each of these four strategies, the CLT's success in preserving the quality of its homes will be dependant on the CLT's overall organizational capacity. Understaffed CLTs will have a harder time monitoring and compelling good maintenance. Stronger CLTs, with greater capacity and deeper pockets often do a better job.

Capital Reserve Funds

A small but growing number of CLTs set aside funds on an ongoing basis to enable the CLT to make capital improvements or to replace major systems, either during the homeowner's tenure or when units turn over. Many CLT resale formulas require CLT homeowners to pay for deferred maintenance or excessive damage at the time of sale, if there are upgrades needed to protect the use value and exchange value of the properties that don't fall into this category. When a roof needs replacement, for instance, before a CLT home can be resold, it is unfair to require a seller who may have lived in the home for only five years to pay the full cost of replacement. Other times, the CLT may feel that upgrades to an older unit that is not being resold are immediately necessary to keep it livable and marketable. A reserve fund allows the CLT to invest in these necessary improvements, without wiping out the savings of the current homeowner and without increasing the home's resale price for the next buyer. The Champlain Housing Trust, for example, deposits half of the lease re-issuance fee that is collected by the CLT at each resale into a "stewardship fund." The CLT can then access these funds for capital improvements or major repairs to CHT homes. OPAL is another CLT that has established reserves for maintaining its resale-restricted homes, but instead of capitalizing these reserves through funds collected at resale, OPAL deposits a portion of each monthly lease fee into a maintenance reserve. Similarly, the Michigan State Housing Development Authority, requires all of the CLTs they finance to charge ground lease fees that are high enough to allow each CLT to set aside at least $25 per month in a capital reserve fund. The CLTs can later use these funds to rehabilitate units before resale. The Agency also allows CLTs to use these reserves to preserve the affordability of a unit or to prevent foreclosure. MSHDA recognizes that increased ground lease fees slightly increase the amount of subsidy necessary to make each unit affordable and they also allow an up-front initial reserve deposit of $1,500 to be charged as a development cost when the unit is first built. MSHDA actually increases the amount of the subsidy to an amount equal to the reduction in the homebuyer's mortgage.

Preventing Foreclosures

Perhaps the most serious homeowner violation is mortgage default. When a homeowner defaults on his/her first mortgage, the CLT generally faces a real risk of loss of affordability. Most lenders require the CLT's ground lease to allow the lender to sell the home

for whatever price they can get for it and to any willing buyer regardless of income after a foreclosure[75].

Many CLTs across the country have negotiated agreements with home mortgage lenders that offer the CLT an opportunity to act to preserve affordability when homeowners default on their loans, while preserving the lender's right to sell a foreclosed home for more than the restricted price if the CLT fails to act. Affirming the value of the CLT model and recognizing the need for a standard set of procedures, Fannie Mae has developed a uniform *Community Land Trust Ground Lease Rider* which outlines rights for the CLT and the mortgage lender.[76] The Fannie Mae rider gives the mortgage lender very strong security while, at the same time, reiterating a significant set of "rights" contained in the CLT model lease that should allow CLTs to preserve the affordability of homes facing foreclosure under most circumstances[77]. The Fannie Mae Rider and model lease expect the mortgage lender to offer the CLT the following "rights" in the event of homeowner mortgage default:

- ***Receive Notice****:* The homeowner is required to immediately provide notice of an Event of Default to the CLT, including copies of all notices the homeowner received from the lender[78].
- ***Opportunity to Cure Default****:* The CLT has the right, but not the obligation, to cure the default on behalf of the homeowner.
- ***Option to Purchase the Home****:* If the default is not cured and the mortgagee forecloses and takes title to the home, the CLT has the option to purchase the home for the amount still outstanding on the mortgage plus the mortgagee's costs. The lender is required to provide notice to the CLT within 60 days of taking title to the property.[79]

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[75] In communities where affordable prices are well below the unrestricted market value for similar homes, allowing lenders to resell a foreclosed CLT home without restrictions on occupancy or affordability gives the lender far more security than they should need. As long as the lender's mortgage is for significantly less than the restricted price, lenders should be able to recapture their costs without violating the resale restrictions. A number of CLTs have been working to convince the lending community to commit to resale controls that survive foreclosure but, until the practice is far more widespread, neither CLTs nor jurisdictions should strictly require this. Homeowners need access to a wide range of competitive mortgage products and it is possible to protect the public interest even when lenders may ultimately have a fallback right to sell units for more than the restricted price.

[76] A copy of the Fannie Mae Rider (Form 2100) can be found at www.burlingtonassociates.com/resources.

[77] These are some of the same rights – but not all of the rights – that a CLT has under the "standard permitted mortgage," as defined in the model CLT ground lease.

[78] In 2006 Fannie Mae agreed to allow CLTs to require mortgage lenders to provide direct notice to the CLT when a homeowner defaults on their mortgage. What is missing from this arrangement, however, which CLTs are still urging Fannie Mae to require, is a multi-party agreement, to be executed at closing, that would spell out the willingness of all parties (private lender, public funder, CLT, and homebuyer) to recognize the rights of all the other parties with a financial stake in the property. Even without Fannie Mae's endorsement, CLTs and their municipal partners are beginning to make use of such multi-party recognition agreements to make sure that everyone will be on the same page should any party default on its obligations.

[79] In states that use a Deed of Trust, instead of a mortgage in financing owner-occupied homes, the mortgagee does not actually take title when a home is foreclosed. The foreclosed home goes straight to sale "on

It should be noted that the CLT is granted another right in the ground lease that has proven invaluable in dealing with foreclosures. The ground lease allows the CLT to increase the ground lease fee in the event of foreclosure or assignment of deed in lieu of foreclosure. If the CLT fails to cure a mortgage default and the lender takes title to the foreclosed home, the resale restrictions disappear, although the ground lease remains in effect. The lender has the right to sell the home to an ineligible household for any price the market will bear. Should that happen, however, the CLT has the right to increase the ground lease fee to the level of fair market rent for the land. This places the CLT in a strong position to persuade the lender to sell the home to the CLT or to persuade the subsequent owner to agree to reinstate the resale restrictions in return for lower ground rent.

Balancing the Concerns of Municipality and CLT

A municipality's oversight of a CLT's activities can occasionally clash with the CLT's relationship with its own homeowners. Such oversight can also clash with other interests or priorities of the CLT. To whatever extent the CLT is expected to perform monitoring and administrative functions "on behalf of" the municipality, the two parties must negotiate a common set of policies that serve their separate and mutual needs. The municipality must then ensure that the CLT implements these policies. The key issue in determining the nature and extent of municipal oversight of a CLT's activities – and the one most often the cause of tension between the parties – is the following:

- Does the municipality rely entirely on the CLT to perform these functions?

Regulating the CLT's Homeowners

Municipalities that provide significant subsidies to make homeownership units affordable to lower income households have a responsibility to ensure that those resources are appropriately used and that the occupancy, condition, and affordability of publicly-assisted homes are permanently preserved. Sometimes attorneys representing local governments will argue that the municipality can only meet this obligation by having a direct regulatory relationship with homeowners. CLTs argue, on the other hand, that the municipality's regulatory relationship should be with the CLT, allowing the CLT to bear primary responsibility for monitoring municipal requirements for the continuing occupancy and affordability of these assisted homes.

Municipal Concern: A municipality may want to establish a direct contractual relationship with assisted homeowners, thus retaining the option of directly enforcing the use and resale controls that encumber those homes.

CLT Concern: The CLT has an interest in maintaining a direct and equitable relationship with its homeowners, one that is not modified or mediated by another party.

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the courthouse steps." When this happens, there is no option for the CLT to purchase the home except as a bidder at the courthouse auction.

Worst Practice: Pricing Homes to Match the Maximum Eligibility of Homebuyers

There is a necessary and important distinction to be made between the percentage of Area Median Income that is used in setting the ***price*** of a CLT home and the percentage of AMI that is used in setting the ***eligibility*** of the CLT homebuyer. Too often, this distinction is blurred, leaving these maximums to be set at the same level. The CLT then finds itself with a marketing nightmare, where it may be required by a municipality to price its homes to be affordable to households earning exactly 80% of AMI and to sell those homes only to households earning no more than 80% of AMI. Pegging price and eligibility to the same percentage of AMI results in too small a pool of prospective homebuyers.[80]

Worst Practice: Double Regulation of Homeowners

Some municipalities insist on recording covenants or deed restrictions against the CLT's homes, supplementing – and usually duplicating – the regulatory agreements the municipality has already executed with the CLT. Homeowners are then regulated by both the CLT's ground lease and the municipality's covenant. At best, these double documents contain similar provisions. At worst, they contain provisions that confuse or contradict the meaning of each. Indeed, in at least one case, a municipality was discovered to have recorded a covenant on a CLT home that contained a resale pricing formula very different than the one contained in the CLT ground lease.[81]

It seems unrealistic to expect buyers truly to understand the myriad restrictions contained in multiple regulatory documents. While direct (and redundant) regulation might make it easier for the municipality to act should the CLT fail to perform as promised, the enforceability of resale restrictions relies, to a significant degree, on both the clarity and consistency of the contracts containing these restrictions and the informed consent of the persons who are signing these contracts. When different – and sometimes conflicting – provisions are scattered among a number of regulatory documents, the opportunities for misunderstanding, conflict, and legal challenge tend to multiply.

Best Practice: Regulate the CLT, Not the Homeowner

The best way for a municipality to ensure that CLT homeowners comply with the municipality's own requirements for the continuing occupancy, condition, and affordability of municipally-assisted housing is to require the CLT to include these requirements in the ground lease that the CLT executes with each of its homeowners. This approach can ne-

[80] A better practice, under this scenario, would be for homes that are limited to eligible buyers earning 80% of AMI or less to be priced so that buyers earning 70% of AMI could afford them, broadening the pool of eligible buyers.

[81] A court would have to decide, in this case, which of the two resale formulas should take precedence, with the municipality possibly arguing for the formula yielding the lower price and the homeowners arguing for the formula yielding the higher price.

cessitate an initial investment of time, for the municipality must identify any requirements imposed by its ordinances, regulations or funding sources and then negotiate with the CLT to ensure that the CLT's lease contains the language necessary to satisfy all municipal requirements. For example, if municipal regulations limit subletting to no more than three months per year, a lease that allows subletting for only two months might be acceptable, while one allowing six months of subletting would have to be modified.

In exchange for project subsidies, a municipality will typically insist on the right to approve the CLT's ground lease and any subsequent amendments to the lease. Some jurisdictions have specified in their grant agreements or loan agreements certain key terms and key provisions that the CLT ground lease must contain. Rather than regulating and monitoring individual homeowners, in other words, the municipality regulates and monitors the CLT, watching to make sure the CLT enforces restrictions of most concern to the municipality. If the CLT ever fails to take appropriate action, the municipality retains the right to step in to protect its interests. This indirect regulation of homeowners may take slightly more time to implement for the first CLT project, but the resulting structure is far easier for all parties to understand and much easier to administer over the long term. A single document, the CLT ground lease, contains all of the relevant provisions protecting the public's interest in the home. As the home subsequently sells from one lower-income owner to the next, only this one document needs to be assigned or re-executed.

Best Practice: Back-up Notice to the Municipality

The Model CLT ground lease requires homeowners to notify the CLT whenever they decide to resell their home. The lease also gives the CLT a preemptive option for a period of time to purchase the home for the formula price. Once this notice is received, the CLT typically has 45 days to indicate whether it will exercise its option and then purchase the home or assign the option to an income-eligible homebuyer. Some municipalities, fearing the CLT might fail to act during this critical period, have suggesting that perhaps the CLT's homeowners should be required to notify the municipality, as well as the CLT, of their intent to sell. A better solution has been developed by the City of **Santa Monica CA.** Santa Monica requires the owners of CLT homes to notify the city of their intent to sell and to offer the city an option to purchase their homes at the formula-determined price – but only in the unlikely event that the CLT fails to respond to the first intent-to-sell notice submitted by the homeowner to the CLT. Municipal staff are thus freed from the burden of receiving routine notices they do not need to act upon, but they are still able to step in and take effective action to preserve the affordability of CLT homes if the CLT falters or fails.

Planning for the Worst: Municipal Contingencies for CLT Failures

The development of affordable housing and the revitalization of deteriorated neighborhoods are high-risk endeavors. Every publicly-funded organization, whether nonprofit or for-profit, that is engaged these activities is likely to face a life-threatening problem at some point in its history. Sooner or later, there will be a carefully conceived project that never gets built, well-meaning homeowners who fall behind on their mortgage payments, or a well-staffed organization that suddenly finds itself without the leadership to survive the loss of a major donor, the cutback in a federal program, or a change in municipal priorities. CLTs are not immune to such risks.

If the resale-restricted, owner-occupied homes of a CLT are to remain affordable, the CLT itself must remain viable, actively engaged in meeting its continuing responsibilities for the stewardship of this housing. What if the CLT no longer has the capacity or commitment to carry out these responsibilities, however? What if the CLT dissolves? This has rarely happened, but CLTs have been around for a relatively short time. A prudent municipality must plan for the worst, preparing for the possibility that a local CLT may someday falter or fail.

There are four types of organizational failure for which contingency planning should be considered:

1. the failure of a CLT to enforce the occupancy and maintenance provisions in its own ground lease;
2. the failure of a CLT to enforce the resale restrictions in its ground lease;
3. the sale of publicly-donated or publicly-funded land from the CLT's portfolio or the sale of (reacquired) improvements by the CLT for purposes other than those for which they were subsidized; or
4. the corporate dissolution of the CLT.

Failure to Act in Protecting the Occupancy and Condition of CLT Homes

The municipality is relying on the CLT to ensure that homes remain owner-occupied and stay in good repair. CLT homeowners are also expected to pay their taxes, comply with local zoning and building codes, and carry insurance on their homes. Some municipalities build these expectations into their loan or grant agreements. In these cases, a CLT that fails to monitor occupancy, to force necessary repairs, or to compel homeowners to pay their property taxes would be in default of its contractual obligations to the municipality.

Failure to Act in Preserving the Affordability of CLT Homes

The CLT is also responsible for ensuring that homes are resold only to income-eligible buyers for the formula-determined price specified in the CLT's ground lease. A CLT that allows municipally-assisted homes to resell for ***more*** than the formula price or that allows

them to be bought by households earning ***more*** than the eligibility standard set by the municipality has usually committed a serious violation of the grant agreement or loan agreement covering the municipality's investment.

Sale of the CLT's Land

CLTs generally buy land with the intention of holding it forever, never reselling it. When a municipality donates land to a CLT or provides project subsidies to help a CLT to purchase land, the municipality has a reasonable expectation that the CLT will continue to own that land, at least through the term of any loan or grant agreement. Some municipalities either prohibit the CLT from selling its land or allow a sale or transfer only to another nonprofit organization with a similar mission. The City of **Santa Monica CA**, for example, has reserved the right to select the recipient organization of any lands sold by the local CLT and can set the price of any resold land. Other municipalities have required the CLT to offer land to the municipality before selling it on the open market.

Dissolution of the CLT

At some point in the future, a CLT could experience problems so severe that the organization's leaders would have no choice but to dissolve the corporation.[82] Failure of the organization would not necessarily jeopardize the residential security or the continued affordability of the CLT's publicly subsidized homes, however. Under the terms of virtually all CLT ground leases, the sale or transfer of a CLT's land, whether voluntarily or involuntarily, does not disturb the lease. Its provisions, protecting the leaseholder's security and the home's affordability remain binding and unaffected.[83] Some municipal sponsors of CLTs, moreover, have required the CLT, in the event of dissolution, to transfer its land to another nonprofit with an affordable housing mission – or to the municipality itself.

Menu of Measures for Dealing with a CLT Failure

Loan agreements, grant agreements, or covenants used by local governments when investing in a CLT typically include provisions requiring the CLT to monitor leases, to enforce owner occupancy restrictions, and to take necessary actions to protect the affordability of CLT homes in the event of resale, refinancing, default, or foreclosure. Sometimes included in these contracts, as well, are contingencies to deal with CLT's failure to perform essential tasks, contingencies to cope with the dissolution of the corporation, and provisions to prevent the loss of a CLT's land.

City-CLT Agreements

[82] Since 1970, only 13 CLTs in the United States that reached the point of holding land are known to have actually dissolved. See the list and assessment of the nation's CLTs (1970-2007) posted at: www.burlingtonassociates.com

[83] Note, however, that a contract to transfer a CLT's land to any entity other than a nonprofit corporation, charitable trust, or governmental entity gives the lessee a right of first refusal, under Section 3.3 of the model lease, allowing the homeowner to purchase the "leased premises" from the CLT.

Different jurisdictions take very different approaches to structuring the legal relationship between a CLT and the municipality. Important differences among the laws of various states mean there is not one best approach that will be appropriate nationwide. In addition, the preferences and experiences of local city attorneys, variations among the legal documents used by municipalities in their other housing programs, and differences in the dollar value of local housing subsidies being protected lead to greater variety in the documents regulating the city-CLT relationship. Some of the most common arrangements are described below.

Grant with No Remedy for Failure

Some jurisdictions make relatively small grants to a CLT without imposing significant remedy provisions. The grant agreement will state the jurisdiction's expectations in very general terms, but make no explicit mention of what should happen if the CLT fails to meet those expectations.

Grant with Repayment Provisions

More commonly, municipal grants for CLT projects will contain a provision stating that if the CLT fails to meet its obligations the CLT must repay the funds. This kind of provision is required, in fact, whenever a jurisdiction invests federal funds from the HOME program. Repayment requirements function mainly as a threat to motivate the CLT's compliance with performance standards set by federal, state, or municipal rules. Except for cases where funds have been granted for a project that does not get built, a CLT that fails is not likely to be in any position to repay granted funds.

Grant Secured with Covenants

Some jurisdictions provide grants to a CLT for project development and record a covenant, a deed restriction, or a development agreement against the CLT's land. Unlike a covenant recorded against an individual house, townhouse, or condominium, which regulates the homebuyer, a covenant on the land imposes requirements directly on the CLT. This kind of covenant typically references the terms and conditions of the municipality's grant agreement and is recorded in the land records. Such a covenant would make it difficult for the CLT to sell homes that are located on the encumbered land, should the CLT fall out of compliance with specific terms of the grant agreement. The covenant also allows the municipality to take the CLT to court in order to enforce compliance

Loan with Repayment Provisions

Many municipalities structure their project subsidies as loans. Typically these loans require no ongoing payments and are ultimately forgiven if the CLT performs all of its obligations for some specified period of time. (The 15-year affordability period required by the federal HOME program is a commonexample.) In this case, the subsidy functions like a grant, since the funds are "free" to the project. Unlike a grant, the jurisdiction will typically record a lien on the CLT's land as security for the loan. If the CLT performs its

role effectively, the loan is eventually forgiven and the lien released. If the CLT fails to protect the affordability of the assisted homes, fails to enforce other terms of the ground lease, or otherwise defaults on the terms spelled out in the loan agreement, however, the municipality can require repayment of the loan and could, ultimately, foreclose on the loan . The City of **Bellingham WA**, for example, can call its entire loan due in the event that the Kulshan CLT is in default under any terms of its municipal loan. Similarly the City of **Cleveland OH** can demand repayment of loan proceeds in the event of any default by the Cuyahoga CLT. Cleveland's loan agreement also explicitly states that foreclosure by the City will not alter the rights of the CLT's homeowners under the ground lease.

Loan with Covenants

A mortgage or deed of trust recorded against the CLT's land puts a municipality in a strong position to require repayment by the CLT of any municipal subsidy, but it may not be the best way to protect the ongoing affordability of CLT homes. In many states, property in foreclosure is sold by the court and, though the municipality would receive the proceeds (up to their loan amount), the municipality may not be able to control who the buyer would be. In most cases, the municipality would rather the land ***not*** be sold, preferring instead for the CLT to comply with specific provisions for occupancy, eligibility, affordability, etc.[84]

If a municipality is investing in a project with the expectation that the homes will remain both owner-occupied and affordably priced for the long-term, the municipality has more at stake than merely its initial investment. Over time the social value of that publicly-assisted housing unit will rise far above the dollar value of the initial subsidy. If the CLT fails to protect the occupancy and affordability of the unit, the social cost of losing that unit to the market is quite high. For this reason, some municipalities ensure that the CLT's obligations cannot be extinguished merely by repaying the loan. Rather than requiring repayment, therefore, the city or county may prefer to be in a position to enforce what is called "specific performance." At the municipality's request, a court could require the CLT to enforce specific terms of its own lease or to make property tax or insurance payments for particular homes assisted by the municipality. The specifics of this legal process can differ quite a bit from one state to another. In some states, even when the municipality has recorded a mortgage or deed of trust, a deed restriction (or covenant) must also be recorded in order to give the municipality the broadest ability to compel the CLT to act in protecting the occupancy and affordability of a municipally-assisted property.

Loan with Purchase Option

[84] Even when a municipality would prefer to see the land transferred from the CLT to another compatible nonprofit organization, it is often preferable for this transfer to take place outside of the foreclosure process.

The City of **Santa Monica** has developed a regulatory agreement and loan agreement to be recorded against two upcoming CLT projects which gives this California city an option to purchase the CLT's land if:

> (1) the CLT attempts to transfer its interest in the Property in violation of this Agreement or
> (2) the CLT defaults on its obligations under this Regulatory Agreement relating to owner occupancy and resale of the Townhomes or
> (3) the owner of a Townhome repeatedly or seriously violates the terms of its ground lease and Land Trust fails to terminate that ground lease in accordance with its terms, and Land Trust fails to cure such default within the time periods provided."

The City has the right to assign this option to another nonprofit housing organization and must pay no more than the outstanding debt on the CLT's land (an amount equal to the initial project subsidy provided by the City). Santa Monica's documents also clearly state that, should the City ever exercise this option, the homeownesr' leases will remain in full force and the City or new landowner will take over all of the CLT's responsibilities.

Preferred Elements of City-CLT Regulatory Agreements

Most municipalities have similar goals and impose similar requirements on their CLTs. The content of a grant agreement, loan agreement, deed of trust, regulatory agreement, covenant, or resale agreement is likely, therefore, to include many of the same elements. The following elements are common – and, from the point of view of the CLT – preferred:

> **Performance standards**: Whatever the regulatory agreement that is used by a municipality, it should clearly state what the CLT is supposed to do. The CLT's obligations might include such things as compliance with fair housing laws, maintaining an open process for marketing CLT homes, monitoring owner occupancy annually, enforcing provisions of the CLT lease, ensuring that future buyers meet approved eligibility requirements and that homes sell for no more than the formula resale price and reporting periodically to the jurisdiction on the status of the project.
>
> **Events of default**: Regulatory documents should clearly spell out the circumstances that would constitute a default by the CLT. These commonly include the failure to meet any of the performance standards mentioned above, as well as any attempt by the CLT to sell the land or to dissolve the corporation.
>
> **Opportunity to cure**: Regulatory documents should outline a process through which the CLT is given notice by the municipality of any default and should provide an opportunity for the CLT to cure the default before further action is taken.
>
> **Remedies**: In the rare case where the CLT does not cure a default of which it has been notified, the regulatory documents should outline the remedies the munici-

pality may pursue. Forcing the CLT to repay loan funds may be an appropriate remedy in some situations (for example, when a CLT decides not to proceed with a project before municipal funds have been spent), the municipality should have other options as well. These might include the right to ask a court to require "specific performance" and, where state law allows, the right to take title to the land through a purchase option or foreclosure or to cause title to be transferred to another nonprofit organization which will take over responsibilities of the CLT.

Nondisturbance of ground lease: The regulatory documents should also contain clear language stating that if the municipality or any other nonprofit corporation, charitable trust, or governmental entity should come into possession of the land through any means, the CLT ground lease will survive such a transfer and the new owner will recognize the rights of the homeowner which are contained in that lease.

Balancing the Concerns of Municipality and CLT

A municipality's contingency planning for the possibility that a CLT may fail to perform or fail to survive has occasionally caused disagreements between the municipality and the CLT around the following issues:

- Which options for protecting the municipality's interests are the least likely to interfere with the CLT's interest in securing private financing for its projects and its homeowners?
- What is the municipality's flexibility (or rigidity) in requiring the CLT to "guarantee" the future affordability of its resale-restricted, owner-occupied homes?

Municipal Options for Enforcement

Generally, a loan secured by a mortgage or deed of trust will give the lender the option to force the sale of the land through foreclosure if the borrower defaults on its obligations. In the case of a deferred payment, forgivable municipal loan for a CLT project, the municipality would typically foreclose only after the CLT had committed a fairly serious violation of the terms of the loan agreement and had failed to take necessary steps to correct such a violation. Although unlikely that a municipality would ever foreclose on such a loan, some municipalities find this worst-case protection reassuring. Certainly the threat of foreclosure may provide additional motivation to the CLT to comply with the terms of the loan.

Consider, however, the position of a CLT's homeowners and the private lenders from whom they are hoping to secure a mortgage. The value of a homeowner's property is dependent upon the rights conveyed through the 99-year ground lease. Were the CLT to fail and were a new landowner to take title to the land and terminate the lease, the homeowner's property would be worthless, since the home is affixed to the land. When a municipality wants to record a lien on the CLT's land, therefore, the homebuyers and their mortgage lenders need to be assured that, if the municipality were ever to foreclose on the land, the ground lease

would survive and the new landowner would be bound by all of the terms of the ground lease.

To this end, Fannie Mae has developed a Uniform CLT Ground Lease Rider which was designed to protect the interests of both the homeowner and the first mortgage lender. Fannie Mae will only approve liens on a CLT's land when such liens benefit a state or local governmental entity and when there is a nondisturbance clause with respect to the ground lease.[85]

Municipal Concern: A municipality wants to be able to compel the CLT to comply with performance standards contained in a grant agreement or loan agreement. In the event of the CLT's failure or dissolution, the municipality wants to protect its investment in the CLT's land and housing.

CLT Concern: The CLT wants to ensure that its homeowners have access to mortgage financing and that homeowners are protected from the negative consequences of the CLT's failure or dissolution.

Worst Practice: Municipal Loans with Boilerplate Documents and Superior Liens

A number of municipalities have recorded mortgages or deeds of trust against a CLT's land as security for their investment in a CLT's projects. In too many cases, municipalities have used legal documents that were originally drafted for loans on rental housing, without modifying them to reflect either the special nature of the CLT model or the important interests of homeowners and their lenders. Since these liens are generally recorded ***before*** the CLT ground lease, subordinating the lease to the lien, foreclosure under these loans could effectively terminate the CLT lease. The ability of a CLT's homeowner to obtain mortgage financing under these conditions is made difficult or impossible (although some mortgage lenders have failed to notice the danger a superior lien can pose to their security and have proceeded with the loan.)

Better Practice: Loan Agreement Protecting Homeowners' Interests

A municipality that is planning to donate a large tract of land or to invest a large amount of money in a CLT project wants to be in a strong position to recover its investment in the event of a CLT's failure. A well-designed loan agreement can protect the municipality's interests without jeopardizing either the homeowners' access to mortgage financing or the homeowners' security of tenure, should the CLT fail.

Best Practice: Grants Secured by Covenants

[85] The FNMA rider does not prohibit liens on the land that are subsequent to the execution of the lease, but it does prohibit the lessor and the lessee from ***subordinating*** the lease to such liens.

Although structuring a local government's subsidy in the form of a loan secured by the CLT's land has been made to work in some jurisdictions, a governmental lien on the land adds undesirable barriers and complications to homebuyer financing, while providing very little additional security for the municipality. Loans recorded against the CLT land also have a negative impact on the CLT's balance sheet because the loans must be listed as liabilities. The land securing these loans is generally booked at a greatly reduced value, moreover, because of the CLT's long-term lease. Many CLTs and their municipal partners, therefore, have concluded that grant agreements coupled with covenants or deed restrictions can protect the municipality's interests as well as loans – with fewer problems for the CLT.

A number of municipalities have, in fact, combined grant agreements and covenants to give a municipality a range of options for curing a CLT's failures. As one example, **Orange County NC** provided housing bond funds and HOME funds to the Orange Community Housing and Land Trust (OCHLT) for a 32-unit development in Chapel Hill, NC. Orange County and OCHLT executed both a Development Agreement outlining OCHLT's project development responsibilities and a Grant Agreement spelling out the CLT's long-term obligations in maintaining the occupancy and affordability of these units. The County then required OCHLT to record a Declaration of Restrictive Covenants which secures performance of the requirements of the other two documents, requires OCHLT to preserve affordability of the units through a 99-year ground lease, and declares both the County and the Town of Chapel Hill to be "third party beneficiaries of and successors to each and every remedy intended to insure the long term affordability of the housing" The Declaration further stipulates that :

> *"each may, in the event of the failure or default of the Lessor in each such ground lease to insure the long term affordability of the housing unit as provided for in the ground lease, exercise all rights and remedies available to the Lessor in the ground lease for that purpose."*

Other municipalities have incorporated similar rights to intervene in their own grant agreements and covenants. The common goal here is to give the municipality the opportunity and authority to do more than simply require repayment of a municipality's money. The municipality needs to be able to take direct action to protect the security and affordability of the homes created with the municipality's assistance.

<u>Ensuring Affordability in the Face of Rising Costs</u>

Many municipalities decide to support a CLT because of the model's past performance and future promise of preserving the affordability of publicly-assisted, privately-owned housing across successive generations of income-eligible homebuyers. A CLT's resale restrictions combat the greatest threat to ongoing affordability – land values that appreciate more quickly than wages. Even when price appreciation is limited, however, a number of other factors can erode the future affordability of CLT homes. Rising insurance or utility costs, for example, rising property taxes or, even more critically for future homebuyers, rising mortgage interest rates can drive up the monthly cost of even an afforda-

bly-priced home. These are costs that are outside the purview of most resale formulas and beyond the control of the CLT.

A municipality and a CLT share a reasonable expectation that the resale prices of CLT homes will remain relatively affordable for the same targeted group of income-eligible homebuyers for many years. When mortgage interest rates or other operating costs rise rapidly, however, the price produced by a CLT's resale formula may be significantly below a home's market value, but still remain out of reach of a lower-income homebuyer.

> Municipal Concern: Municipalities want CLTs to perpetuate the affordability of publicly-assisted homes, keeping resale prices permanently within the financial reach of lower-income homebuyers.
>
> CLT Concern: CLTs have the same interest in preserving affordability, but they may sometimes need supplementary assistance from a municipal partner in coping with factors beyond their control that can erode the affordability of resale-restricted homes.

Worst Practice: Guaranteed Affordability for Future Resales

Some municipalities, in their quest for permanent affordability, require a CLT to ***guarantee*** that publicly-assisted CLT homes will stay affordable forever for future homebuyers earning no more than a targeted percentage of the local AMI and paying no more than a specified percentage of the household's annual income. A guarantee of ***initial*** affordability on the pricing of a new CLT home is both reasonable and achievable. A guarantee of ***permanent*** affordability is not, since affordability can be affected by more than the rising value of land and housing – the one factor entirely within a CLT's control. A municipality's insistence on a CLT guaranteeing affordability forever becomes especially problematic (and indefensible) when this requirement is imposed on a CLT but not on other recipients of municipal aid.[86]

Best Practice: Shared Responsibility for Maintaining Affordability

The best way to balance the competing concerns of the municipality and the CLT is for the parties to ***share*** long-term responsibility for ensuring that publicly-assisted, resale-

[86] There is a temptation on the part of some municipal officials to conclude that because a CLT is both capable of preserving affordability indefinitely and committed to doing so, the CLT must be held to a higher standard than other recipients of a municipality's funds. In **Sarasota FL**, for example, the local Office of Housing and Community Development wanted to require the Community Housing Trust of Sarasota County to guarantee that it would keep any HOME-assisted homes affordable to households earning below 80% forever. This requirement was added to the lien that OHCD proposed to attach to every CLT home. When the CLT objected that this requirement was not being imposed on the other owner-occupied housing being assisted with HOME funds, where OHCD was using a deferred-payment, second mortgage to preserve affordability for only the 15-year minimum required by federal rules, OHCD relented and removed the longer requirement for the CLT. OHCD also stipulated that, at the end of the 15-year period, OHCD (at its sole discretion) could commit additional subsidy funds to the CLT's homes if this were needed to ensure continuing affordability for households earning less than 80% of AMI.

restricted homes remain affordable in perpetuity. When mortgage interest rates or other operating costs make a CLT home ***un***affordable for future buyers, despite the below-market price produced by the CLT's resale formula, the CLT has three options:

(1) secure additional public or private subsidies to allow the CLT to push the home's purchase price even lower than the below-market price determined by the resale formula;
(2) require future homebuyers to pay a slightly higher percentage of their income; or
(3) set the income eligibility for future homebuyers at a slightly higher level than was required for the previous generation of CLT homebuyers. [87]

Without guaranteed access to future subsidies, however, or without the flexibility to adjust the eligibility requirements for future buyers, CLTs cannot absolutely ensure that their resale-restricted homes will always be within the financial reach of this targeted group of lower-income homebuyers.

A Partnership for Permanent Affordability in Chapel Hill, North Carolina

The Town of Chapel Hill requires the Orange Community Housing and Land Trust to sell its municipally-assisted homes to households earning less than 80% of Area Median Income. These homes are initially priced so that homebuyers earning 70% of AMI must pay no more than 30% of their monthly income, including mortgage, property taxes, insurance, and the CLT's land lease fee. (By pricing to 70% rather than the maximum 80%, the CLT has a wider range of potential buyers and some ability to absorb future increases in interest rates or other housing costs.) At resale, the CLT calculates the maximum sale price according to the formula included in its ground lease. The Town has reviewed and approved the use of this specific formula and has reason to expect that, under most circumstances, future buyers earning 80% of AMI or less will be able to afford homes that are priced in this manner. The Town's Performance Agreement requires OCHLT to make sure that its homes are always sold to buyers who earn less than 80% of AMI. Any sale to a higher income household would constitute a violation of the Agreement. But the Town also recognizes that OCCLT's resale formula is not, by itself, a guarantee of permanent affordability. If the resale formula fails to perform as promised or if other costs or conditions inflate the resale price of an OCCLT home beyond what a household at 80% of AMI could afford, the Agreement requires OCCLT and the Town Manager to consult with each other before either takes action.

This provision recognizes the Town's and the CLT's mutual commitment to maintaining affordability, without requiring the CLT to promise more than it can deliver. It encourages the Town to work cooperatively with the CLT to resolve what is likely to be a tem-

[87] It would also be possible, as a fourth option, for a CLT's resale formula to require homeowners to reduce their resale prices to an "affordable" level in this circumstance, a requirement implicit in the mortgage-based resale formulas mandated by some municipalities. Most CLTs (and most municipalities) choose not to impose this kind of requirement because it can result in homeowners receiving very little equity at resale. It can even result in lower-income homeowners being forced to resell for ***less*** than they initially paid for their homes. Without imposing this unacceptable risk on their homeowners (and their mortgage lenders), however, CLTs have no way to guarantee that prices will ***always*** meet an affordability standard that requires homes to resell for a price that is within the reach of households at a targeted level of income, no matter what happens to interest rates, utility rates, etc.

porary affordability problem.

Reflecting on the Future: Trends and Challenges in the City-CLT Partnership

There has been a marked increase in the degree and diversity of governmental support received by community land trusts from cities, counties, and towns in recent years, accompanied by major changes in the relationship between the parties. The most obvious trend has been the frequency with which CLTs are now functioning as the partners of local government, helping to implement municipal policies, programs, and plans. Three other trends, though still emerging and not yet widespread, may prove to be equally significant. They hold special promise for bringing CLTs to scale. They also pose sizable challenges to the ways in which the model has been structured, championed, and applied for most of its history. How these trends and challenges are managed in the years ahead will shape not only the future of the partnership between municipalities and CLTs but the productivity, sustainability, and identity of the entire CLT movement.

From City-as-Supporter to City-as-Instigator

For most of the CLT's history, the initiative for organizing a CLT has come from individuals or organizations ***outside*** of local government.[88] If municipal officials participated at all, they were drawn into the process rather late in the game, after the foundation for a new CLT had been laid; after most of the key organizational decisions had been made by members of the community which the CLT was planning to serve. Only when the train was already on the tracks did the organizers of a CLT look to local government. Even then, the municipality's customary role was to loan (or grant) funds to the new organization, not to shape it, lead it, or tell it where to go.

Today, a municipality is as likely to be the driving force for creating a CLT as it is to be the *ex post facto* dispenser of much-needed resources – the locomotive, not merely the coal car. Municipal officials in **Highland Park IL**, **Irvine CA**, **Sarasota FL**, and **Chicago IL**, for example, did not wait for a CLT to get up and running and to walk through the door asking for municipal support. These cities took the initiative in evaluating the feasibility of a new CLT. They took the lead in introducing an unfamiliar model to the public. They took responsibility for convening and staffing the process of planning the CLT. They took a prominent place on the board once the CLT was established.

When a municipality's leaders make a deliberate choice to be the instigator of a CLT, moving beyond the more traditional role of impartial lender or grantmaker, there are clear advantages for the new organization.[89] Sponsorship by a local government often brings accelerated access to the kinds of housing subsidies, both federal and local, that a CLT will need if it is to acquire land and build housing. Municipal staff may serve as the de

[88] Two notable exceptions of CLTs started in the 1980s with significant involvement from local government are the Burlington Community Land Trust in **Burlington VT** and Time of Jubilee in **Syracuse NY**.
[89] A fuller discussion of the advantages and disadvantages of different forms of CLT sponsorship can be found in John Emmeus Davis, *Starting a Community Land Trust: Organizational and Operational Choices*, 2007. Available on-line at the CLT Resource Center (*www.burlingtonassociates.com)*.

facto staff for the new CLT, speeding the process of developing the CLT's first projects. In many recent cases of municipal sponsorship, moreover, the CLT becomes the favored beneficiary of municipal ordinances like inclusionary zoning, density bonuses, or other regulatory measures that extract affordable units from private developers and then place those units under the CLT's stewardship.

CLTs that are formed at the initiative of local government face a special set of challenges, however. Even a CLT that is built and based in a local community may have difficulties retaining street-level legitimacy and popular acceptance, but it can be harder still when a CLT is created through a top-down process convened and facilitated by city staff. Some cities, like the ones mentioned above, have managed to get around this hurdle by making a concerted effort to recruit and to involve many nongovernmental stakeholders in the process of planning and organizing the CLT, broadening its base from the very beginning. But many cities do not possess either the kind of staff that is needed to run such a participatory process or the kind of credibility at the neighborhood level that is necessary to draw grassroots leaders into the process. Especially in neighborhoods scarred by urban renewal or municipal neglect, a CLT that is started by local government may lead a twice-burned population to regard this whole endeavor with suspicion. The CLT, as a result, may find itself supported by city government but never find favor with the larger community.

There is also a tendency, when the impetus for starting a CLT comes from local government, for the CLT to become a one-trick pony where affordable housing is its only focus, its only activity. The CLT, in its initial conception and early application, was promoted as a tool for restoring regional economies,[90] a strategy for promoting land reform, [91] a means of empowering low-income people and rebuilding low-income neighborhoods.[92] Housing was merely one component of a larger plan for the the CLT's social, economic, and political revitalization of a targeted geographic area.

Although CLTs are still being used in this more comprehensive way,[93] there are many communities today where affordable housing is the only activity in which a CLT is engaged, often because that is the only activity a local government is willing to support. Especially where a CLT has been started by a local government expressly for the purpose of enhancing the effectiveness and longevity of the municipality's investment in afford-

[90] See, for example: International Independence Institute (1972). The Community Land Trust: A Guide to a New Model for Land Tenure in America. Cambridge, MA, Center for Community Economic Development.; and Swann, B. (1972). Land Trusts as Part of a Threefold Economic Strategy for Regional Integration.

[91] John Emmeus Davis (1984). Reallocating Equity: A Land Trust Model of Land Reform. Land Reform, American Style. C. C. Geisler and F. J. Popper. Totowa, NJ:, Rowman & Allanheld.; and Matthei, C. (1992). "U.S. Land Reform Movements: the Theory Behind the Practice." Social Policy **Spring**..

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

[93] Dudley Neighbors Inc. in **Boston MA**, the Woodland CLT in **Clairfield TN**, the CLT in the Southern Berkshires in **Great Barrington MA**, and the Madison Area CLT in **Madison WI** are prime examples of CLTs making use of the model for more than housing.

able housing, a CLT is less likely to pursue the more expansive purposes for which the model was originally conceived.

A more serious challenge, when a CLT is instigated by local government, is getting government to let go. Having controlled the process of starting the CLT, some in city hall may want to extend their control to the process of governing the CLT after it is established. The municipal presence on CLT boards has, in fact, been expanding in recent years, a second trend in the evolving relationship between municipalities and CLTs.

From City-as- Participant to City-as-Governor

As municipal investment in the projects and operations of CLTs have grown larger and as municipal involvement in establishing CLTs has come earlier, municipal influence in the governance of CLTs has been expanding as well. At a minimum, the number of municipal representatives on the governing board has been growing. At the extreme, municipal participation has occasionally given way to municipal domination.

From the earliest days of the CLT movement, most CLTs included at least one employee or elected official from local government within the third of their board set aside for "public representatives." Like other members of this voting block, municipal officials were usually nominated and appointed by the rest of the CLT's board. They were seldom appointed by a mayor or city council, nor were they authorized to speak on the municipality's behalf. Their role on the board was to serve as an informal conduit for the flow of information between the CLT and the city. Almost never were they a mouthpiece for city hall, conveying instructions on how the CLT should conduct its business.

This pattern has been changing in recent years. The number of seats reserved for municipal representatives has been increasing and the power to decide who will fill these seats has been passing to municipal authorities outside of the CLT. In a growing number of cases, the "public representatives" who make up a third (or more) of a CLT's board are both municipal officials and municipal appointees.

More seats on a CLT's board for municipal officials does not necessarily translate into municipal control over the CLT, especially when these municipal seats are split among several municipalities or split among multiple departments within the same municipality. The Champlain Housing Trust in **Burlington VT**, for example, designates a block of four seats on its 15-member board for municipal representatives, who are drawn from cities and towns throughout CHT's three-county service area. No municipality is allowed more than one representative, nor does a municipality get to decide who its representative will be. It is left to CHT's executive committee to nominate the senior municipal executives who will serve on its board. In North Carolina, the Orange Community Housing and Land Trust reserves four seats on its 12-person board for municipal representatives from **Chapel Hill**, **Carrboro**, **Hillsborough**, and **Orange County**. Each municipality gets to appoint its own representative to the OCHLT board. In **Highland Park IL**, a third of the seats on the board of the Highland Park CLT are filled by municipal employees appointed by the mayor. One of these municipal seats is reserved for a city councilor, one for a

member of the housing commission, and one for someone with an expertise in affordable housing.[94]

In all three of these cases, municipal participation in the governance of the CLT is substantial, while hardly approaching the level of municipal control.[95] There have been a few recent cases, however, where a municipality has insisted on playing a more dominant role. The City of **Irvine CA**, for example, appointed every member of the initial board of the Irvine Community Land Trust and has retained the right to appoint a third of the seats on all future boards. The Chicago CLT, a nonprofit corporation created through the initiative of the **City of Chicago**, has a governing board that is structured in the three-part configuration of the "classic" CLT, but the mayor and city council appoint *every* member of the board.[96] An even more extreme case of municipal control is found in **Flagstaff AZ**, where the CLT has neither an identity nor an existence that is separate from local government. It is operated as an internal program of the City of Flagstaff.

Expanded municipal involvement in CLT governance may prove in some places to be a practical and productive strategy, either as a temporary arrangement until a new CLT is firmly established or as a permanent alternative to the community-based structure of the "classic" CLT. The current consensus, however, among most practitioners who are organizing, assisting, staffing, or funding CLTs in the United States, is that CLTs tend to do better when they are structured and perceived as being somewhat independent of their municipal sponsors. The challenges posed by municipal control continue to convince most practitioners that a degree of separation between the city and CLT remains the preferable course.[97] These challenges include the following:

> ***Marketing of CLT homes***. Marketing an innovative and unfamiliar form of tenure can be difficult enough without adding the burden of "government housing" to the package. Municipal control of a CLT may cause prospective homebuyers to confuse CLT housing with "public housing." It may lead them to focus less on what the model gives (e.g., homeownership for low-income families) than on what the model

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[94] There is also the unique case of Jubilee Homes in **Syracuse NY**. The City of Syracuse does not appoint representatives to the governing board of Time of Jubilee, a local CLT. However, the City does appoint half of the seats on the board of directors of Jubilee Homes, the community development corporation created by the City of Syracuse and Time of Jubilee to sever as the developer and marketer of single-family homes located on lands owned by Time of Jubilee. The CLT appoints the other seats on Jubilee Homes' board of directors.

[95] When the third of the board designated for "public representatives" is explicitly reserved for ***municipal*** representatives and when local government increasingly insinuates itself into the relationship between the CLT and its leaseholders, the CLT begins to look more and more like the "tri-layered property regime" described by Amnon Lehavi in "Mixing Property," *Seton Hall Law Review* 38: 137-212 (2008). The CLT, in Lehavi's portrait, combines the traits and balances the interests of private property, common property, ***and*** public property.

[97] The separation between a CLT and a sponsoring municipality is both organizational and perceptual. There is a continuum of ***corporate control***, where the CLT is totally independent of the municipality at one extreme – and totally dominated by the municipality at the other. There is also a continuum of ***community acceptance***, where residents of the CLT's service area perceive the CLT to be either a champion of their interests or a captive of the municipality's policies and priorities.

takes away (e.g., restrictions on use and resale). It may erode consumer confidence in the CLT product among all who have had contentious dealings with municipal staff. If city hall says it's good, it must be bad.

Consistency of policy and program. CLTs need consistency and predictability in both their relations with external partners and their relations with internal leaseholders. Municipal regimes tend to come and go, with policies, programs, and priorities that often change with every mayor. A CLT too closely aligned with one municipal administration can fall quickly out of favor when another administration comes into office, leaving the CLT high and dry. CLTs that retain a safe distance from local government, by contrast, may have a better chance of navigating inevitable shifts in the political wind.

Municipal liability. Local politicians may be willing to lend their support to the establishment and expansion of a CLT, but they do not want to be blamed if something goes wrong. A CLT that maintains a degree of distance from local government, even while accepting resources and oversight from the municipality, shields the city council and other political leaders from direct responsibility for the CLT's actions.[98]

Diversification of the CLT's funding base. Establishing the CLT as an independent, nonprofit organization opens lucrative doors that are seldom available to programs operated by a municipality or to organizations dominated by a municipality. With separation from the municipality, a CLT becomes eligible for designation as a Community Housing Development Organization, qualifying it for federal funding for projects and operations through the HOME program. With a 501(c)(3) tax exemption, a CLT becomes eligible for donations of dollars, lands, and buildings from charitable foundations and private individuals.[99] Distance and independence from a sponsoring municipality may also help a CLT in building a donor base throughout its service area.

Dilution of community accountability. There is a tendency when a municipality exercises more control over staffing and governing a CLT for the community to exercise less. There may fewer seats reserved for leaseholders and other community residents; there may be no membership established to nominate and elect the governing board; or there may be less inclination on the part of community residents to involve themselves in activities of an organization perceived to be a servant of city hall. It is not automatic that community involvement declines whenever municipal involvement increases, but the risk is there.

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[98] Liability is most extreme, of course, in cases like **Flagstaff AZ** where the CLT is established as an internal program of the municipality. The municipality is landowner and lessor. Another downside of this arrangement, of course, is the loss of tax revenue when the land is not privately owned.

[99] Note, however, that a high degree of municipal control does not necessarily preclude a nonprofit organization from receiving 501(c)(3) status. A close organizational and programmatic tie between a CLT and a sponsoring municipality has occasionally been the basis for a CLT's successful application for federal tax exemption, with the CLT arguing that it is "lessening the burdens of government."

How ***much*** separation should a CLT have from the municipality that supports it? How ***much*** accountability should a CLT have to local residents, relative to its accountability to local government? The "classic" CLT provides a very specific organizational recipe: (1) a corporate membership that is open to any adult resident of the CLT's service area; (2) a governing board that is composed of equal numbers of lessees, corporate members who are not lessees, and any other category of persons described in the CLT's bylaws; and (3) direct election of a majority of the directors on the governing board by the CLT's members. These organizational elements are part of both the federal definition of a "community land trust," adopted by Congress in 1992, and the definition of "CLT classic" approved by the National CLT Network in 2006.[100]

Many of the 200 CLTs that currently exist in the United States, however, do not match this definition. They have modified the "classic" model in various ways, including those organizational elements originally designed to keep a CLT accountable to its leaseholders and its community. Recognizing this reality, the National CLT Network has opened its membership not only to organizations that match the definition of "CLT Classic" but also to "CLT Variations," where community accountability is achieved in many different ways. Thus an organization may be eligible for membership in the Network even if it lacks a voting membership, "as long as some structure exists to ensure the board's accountability to the residents of its service area."

In tacit acceptance of the growing influence of ***some*** municipalities in the governance of ***some*** CLTs, the National CLT Network also removes the limitation on the number of local officials who may sit on a CLT's board that is part of the federal definition of a CLT. The "classic" CLT, in this definition, is a "private, nonprofit corporation that . . . reserves no more than a third of its board for appointees or employees of a local government." A private, nonprofit corporation may be admitted to membership in the Network as long as it is "not sponsored by a for-profit organization." There is no barrier to admission if the CLT is sponsored by local government – even if more than a third of the seats on the CLT's board are municipal appointees or employees.

This signals a switch in the company that older CLTs are willing to keep. It also signals a change in what it means to be a CLT. Is there some point along the wide continuum between a CLT being completely independent of local government and a CLT being completely controlled by local government where an organization can no longer be considered a ***community*** land trust? More practically, is there some point where the organization's ability to succeed as a CLT is undermined by the challenges posed by too tight a municipal rein over the organization's assets and operations or too prominent a municipal presence on the organization's board? These are questions with which the CLT Network, CLT practitioners, and municipal officials will be wrestling for years to come.

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[100] The federal definition of a "community land trust" was inserted into the 1992 amendments to the National Affordable Housing Act of 1990 by Bernie Sanders, the Congressman from Vermont. The National CLT Network's definition of "CLT Classic" appears in the "membership standards" that were considered and approved by the Network at its organizational meeting in Boulder, Colorado on July 12, 2006.

From CLT-as-Developer to CLT-as-Steward

Most CLTs play the role and perform the tasks of a real estate developer, using their own employees to initiate, manage, and market newly constructed (or newly rehabilitated) housing. Some CLTs have spearheaded nonresidential projects as well, including commercial buildings, nonprofit incubators, community centers, and community gardens, among others. Although the pace of development among the nation's CLTs has been modest so far, given the number of younger and smaller CLTs that are still building their capacity to do development, the CLT-as-developer has reached an impressive level of proficiency and productivity in a few communities. This continues to be a role that most CLTs aspire to play.

Development is not the model's forte, however. There is nothing in the CLT's distinctive approach to ownership, organization, and operation that makes real estate development easier or cheaper to do. There is nothing that makes the CLT a better developer than any other nonprofit or for-profit entity that has been given municipal support to produce affordable housing or other facilities needed by the community.

Stewardship, not development, is what a CLT does best. The model's real strength lies in protecting a municipality's investment, protecting a community's assets, and preserving access to land and housing for persons of modest means. It is in the period ***after*** a project is developed that a CLT makes its most durable and distinctive contribution to a community's well-being.

That is not to say that CLTs in the past were wrong to become developers. Offered a once-in-a-lifetime chance to develop a sizable parcel of city-owned land, as occurred in **Albuquerque NM**; offered priority access to municipal funding and state funding for the construction of affordable housing, as occurred in **Burlington VT**; offered millions of dollars by local employers to build "starter homes for working families," as occurred in **Rochester MN** – the organizers of these CLTs eagerly and reasonably seized the golden opportunity to become a developer.

There are many places, however, where the role was reluctantly accepted by a CLT's organizers when they concluded they had no other choice. In **Gloucester MA**, **Albany NY**, and the West End of **Cincinnati OH**, for example, where private developers were not building anything which local residents could afford to buy and where nonprofit developers were doing little or nothing to fill the gap, CLTs were forced to become developers of last resort. They saw no other way to serve their communities.

On the other hand, in cities like **Portland OR**, **Cleveland OH**, and **Boston MA**, where there already existed a multitude of nonprofit housing developers at the time when a CLT was proposed, stewardship was originally intended to be the primary function of the new CLT. Development was to be done by existing community development corporations, who would later transfer the underlying land to the CLT and entrust the CLT with long-term responsibility for preserving the affordability of whatever housing had been developed. In actuality, this seldom happened. Only in Portland were CDCs willing to de-

velop residential projects in partnership with the local CLT, transferring assets and relinquishing control after construction. In Cleveland and Boston, the Cuyahoga CLT and the Boston Citywide CLT were forced into becoming specialty developers, pursuing projects that local CDCs did not want to do. The former survived. The latter did not. Even in Portland, the CLT has become more of a developer than it ever planned to be, as opportunities for partnering with local CDCs have become less frequent.

Real estate development is likely to remain a serious CLT activity for the foreseeable future, whether by choice or by default. A counter-trend has been emerging in recent years, however. An increasing number of newer CLTs leave development to others, confining their own activities to the management of land and the long-term stewardship of affordable housing.[101] The CLT-as-steward is becoming a more prominent part of the national landscape.

CLTs are being ***pushed*** in this direction by the need to distinguish themselves from other nonprofit developers of affordable housing in what has become, in some jurisdictions, a very crowded field. Instead of competing for project subsidies, some CLTs have found stewardship to be a more sustainable niche in the organizational environment. They specialize in an activity that other nonprofits are less willing or less suited to do.

In other jurisdictions, CLTs are being ***pulled*** toward stewardship by the vacuum created by a seismic shift in public policy. Municipal funding for affordable housing – and municipal mandates or incentives for inclusionary housing –traditionally focused almost exclusively on the front end of the development process. It was achievement enough to expand the availability of affordably-priced or affordably-financed housing, helping lower-income households to gain access to homeownership. There was little concern for what might happen to the occupancy, condition, and affordability of these publicly-assisted homes after they were purchased. No longer is this the prevailing attitude. Municipal officials have come increasingly to accept the policy prescription that, when public dollars or public powers are used to create affordably-priced, owner-occupied housing, something must be done to preserve that housing for lower-income people for many years, one resale after another.

What that "something" might be is poorly organized or completely missing in too many municipalities, however. No administrative entity exists for monitoring and enforcing the long-term controls over use and resale which local officials have decided to impose. Enter the CLT. As municipal policy has moved into closer alignment with the model's central concerns and core competencies, the CLT has caught the attention of policymakers and program administrators who are seeking a manager for affordably-priced, owner-occupied housing being produced by for-profit (and nonprofit) developers with the municipality's assistance or insistence. The CLT-as-developer is not needed in this situation

[101] There are also a couple of <u>older</u> CLTs that have confined their activities to the stewardship of housing developed by others. Time of Jubilee in **Syracuse NY** is the steward for housing developed by Jubilee Homes, Inc. Dudley Neighbors, Inc. in **Boston MA** is the steward for housing developed by for-profit and nonprofit developers under the direction of the Dudley Street Neighborhood Initiative.

– and is unlikely to receive municipal support. Local government is looking for a different sort of partner, the CLT-as-steward.[102]

In **Chicago**, for example, the Department of Housing did not need another developer of affordable housing. It already had plenty of nonprofit and for-profit developers producing deeply subsidized condominiums with the City's support. What it needed was a nonprofit partner that was willing to work on a city-wide basis to monitor and to enforce the affordability controls that the City was attaching to the deeds or inserting into ground leases for these affordably-priced, owner-occupied homes. The Chicago CLT was created to serve this role.[103] Similarly, the CLT in **Irvine CA** was created at the municipality's initiative to serve as the permanent steward for units produced by for-profit developers under the City's inclusionary zoning ordinance. The Irvine CLT will do no development itself.

Serving as a municipality's designated steward is not without its challenges. As CLTs discovered in the past, when they agreed to leave development entirely in the hands of local community development corporations, allowing someone else to control the property pipeline can sometimes result in the CLT receiving only a trickle of land and housing – or only those assets that are wanted by nobody else. Furthermore, when the CLT is not involved in the process of designing and developing homes, the CLT may occasionally get stuck with marketing, managing, and stewarding a product that nobody wants to buy.[104]

A more serious challenge is getting government to pay for stewardship. Public officials at all levels of government have tended to be more receptive to covering the costs of constructing and financing owner-occupied housing than to covering the costs of monitoring the occupancy, maintaining the condition, and managing the resale of such housing.[105] If CLTs are to forego the fees that come from developing new housing, they must find other

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[102] Since our focus here is on ***municipal*** support for CLTs, we have said little about ***state*** support. It is worth noting, however, that in Delaware and Rhode Island the trend toward the CLT-as-steward has been spurred by the stewardship concerns of state agencies. The Diamond State CLT, started with the backing of the Delaware State Housing Finance Authority, was created to serve as the state-wide steward of resale-restricted, owner-occupied housing constructed by private developers and sold for a below-market price using subsidies provided by SHFA. The Community Housing Land Trust of Rhode Island was formed by a coalition of local CLTs and nonprofit housing developers to act as the state-wide steward for inclusionary housing units created as a result of a newly-enacted state law stipulating that municipalities could only meet the state's mandated fair share housing goal of 10% if a mechanism exists for ensuring the continuing affordability of these units.

[103] This role of city-wide steward became even more important when, within a year of the CLT's creation, the **Chicago** City Council approved an inclusionary housing ordinance.

[104] As argued earlier (on page 71), this problem is exacerbated when a municipality requires a CLT to set the pricing of inclusionary homes and the eligibility of the homes' buyers at the same targeted level of AMI. The CLT is forced to act as the steward of resale-restricted homes for which the pool of prospective buyers is dangerously thin.

[105] CLT practitioners find a special irony here. For decades, federal, state, and local officials have tolerated the removal of the public's investment when publicly-subsidized, privately-owned homes were resold. They were willing to re-subsidize those homes again and again, often at a higher level with every resale, across several generations of income-eligible buyers.

sources of revenue to cover their stewardship costs, either operating subsidies provided by local government or internal fees generated by their own portfolios.

There is one challenge which a concentration on stewardship does not pose. It does not require a recasting of the "classic" model. It may be argued, in fact, that stewardship, not development, is what the "classic" model was always about. The evolving municipal role in instigating CLTs and the expanding municipal role in governing CLTs tend to stretch the CLT beyond the boundaries within which the model has been traditionally conceived and structured. The CLT-as-steward tends to draw the CLT back to itself, where shepherding resources which a community invests and capturing values which a community creates are paramount. Stewardship, as the CLT's principal activity, brings the model full circle, returning the CLT to the function for which it was originally designed; refocusing the CLT on what it does best.

Appendix: Persons Interviewed or Consulted

CLT Practitioners

Dena Al-Khatib	Chicago Community Land Trust City Chicago, IL
Lisa Byers	OPAL Community Land Trust Orcus Island, WA
Connie Chavez	Sawmill Community Land Trust Albuquerque, NM
Amy Demetrowitz	Champlain Housing Trust Burlington, VT
Martina Guilfoil	Community Housing Trust of Sarasota County Sarasota, FL
Alison Handler	Portland Community Land Trust Portland, OR
Roger Lewis	Thistle Community Housing Boulder, CO
Aaron Miripol	Thistle Community Housing Boulder, CO
Marge Misak	Cuyahoga Community Land Trust Cleveland, OH
Steve Ostiguy	Church Community Housing Newport, RI
Greg Rosenberg	Madison Area Community Land Trust Madison, WI
Paul Schissler	Kulshan Community Land Trust Bellingham, WA
Mary Ellen Tamasy	Highland Park Illinois Community Land Trust Highland Park, IL
Jeff Washburne	City of Lakes Community Land Trust Minneapolis, MN
Jason Webb	Dudley Neighbors, Inc. Boston, MA
Christine Westfall	Orange Community Housing and Land Trust Carrboro, NC
Dave Wilkinson	City First Enterprises

	Washington, DC
Ian Winters	Northern California Community Land Trust Berkeley, CA

Municipal Officials

Trell Anderson	Clackamas County (formerly with City of Portland), Clackamas, OR
Loryn Clarke	Town of Chapel Hill, Chapel Hill, NC
John Feuerbach	City of Boston, Boston, MA
Joe Gray	Delray Beach Community Redevelopment Authority, Delray Beach, FL
Hickory Hurie	City of Madison, Madison, WI
Marti Luick	City of Albuquerque, Albuquerque, NM
Brian Pine	City of Burlington, Burlington, VT
Lee Smith	City of Highland Park, Highland Park,, IL
Jeff Yegian	City of Boulder, Boulder, CO

Providers of Technical Assistance

Michael Brown	Burlington Associates in Community Development St. Joseph, MN
Tad Everhart	Community Development Law Center Portland, OR
Kirby White	Equity Trust Voluntown, CT

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