

Special Attention of:

All Regional Administrators
All Field Office Managers
All Regional Directors for CIPID
All CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

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Cross Reference:

SUBJECT: COMMUNITY LAND TRUSTS AND THE HOME PROGRAM

1. **PURPOSE:** The purpose of this Notice is to provide guidance on the potential use of HOME funds by Community Land Trusts (CLT) when participating jurisdictions (PJ) are interested in providing assistance to first-time homebuyers.
2. **BACKGROUND:** The Housing and Community Development Act of 1992 provided an avenue for "Community Land Trusts" to become eligible for HOME funds by integrating them into the statute as Community Housing Development Organizations (CHDOs). In essence, CLTs; are considered CHDOs for the purpose of the HOME program and are eligible for the same opportunities afforded to CHDOs. The Act makes it clear that HOME funds may be used by CLTs to carryout various HOME activities, including those identified in Section 92.206 of the HOME regulations. CLTs may also receive HOME funds for operating expenses. In addition, it allows for the provision of technical assistance funds to intermediaries who work with PJs or PJ-designated nonprofits for the establishment of new CLTs.

Community Land Trusts are, perhaps, one of the most effective means of ensuring permanent affordability of resident ownership simply because the trust maintains ownership of the land. The objective of a CLT is to acquire land and make it available to individual families, cooperatives and others through longterm leases up to 99 years. While the leaseholders do not hold title to the land, they may own the buildings or housing units/structures on the land.

3. **DEFINITIONS**

A Community Land Trust (CLM) as defined in **92.302(c)(6)** is a community housing development organization that:

CGHP: Distribution: W-3-1, W-2, R-1, R-1-3 (Adm), R-6, R-9, Special (CPD Regional and Field Office Directors)

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- (a) Is established, and undertakes activities to:
 - (1) acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
 - (2) transfer ownership of any structural improvements located on such leased parcels to the lessees; and
 - (3) retain a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;
- (b) Is not sponsored by a for-profit organization;
- (c) Has a corporate membership open to any adult resident of a particular geographic area specified in the bylaws of the organization;
- (d) Has a board of directors which includes a majority of members who are elected by the corporate membership and is composed of equal numbers of (1) lessees, (2) corporate members who are not lessees, and (3) any other category of persons described in the bylaws of the organization; and
- (e) Is not required to have a demonstrated capacity for carrying out HOME activities or a history of serving the local community within which HOME-assisted housing is to be located.

An **intermediary** is an organization that, in the determination of HUD

- (a) Customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;
- (b) Has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building, and training) to community housing development organizations or similar organizations that engage in community revitalization;
- (c) Has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing; and

- (d) Has described the uses to which such assistance will be put and the intended beneficiaries of the assistance.

4. THE ROLE OF A COMMUNITY LAND TRUST IN THE HOME PROGRAM

The role of a Community Land Trust in the HOME Program is basically that of a CHDO or community-based nonprofit developer of affordable housing.

CLTs, acting as CHDOs or community-based nonprofit developers, have certain advantages in that they can be a means for the PJ to:

- (a) provide greater local control over land and housing ownership,
- (b) protect affordability for future residents by controlling the sale of buildings and other improvements on their land,
- (c) protect the community's long-term interest by continuing to own land while conveying the long term use of the land to individuals, cooperatives or other entities,
- (d) carryout an ongoing acquisition and development program that meets diverse community needs, and
- (e) be flexible by not only promoting resident ownership and management but also by creating and preserving such critical resources as affordable housing, neighborhood businesses, and social services.

CLTs see their role as working to support and complement existing efforts in a community. For example, nonprofit organizations planning to develop affordable housing in a community, could develop the housing on land owned by a CLT while the trust focuses its efforts on organizing grassroots support and obtaining prospective leaseholders/homeowners. In addition, they are a means of developing and supporting limited equity housing cooperatives and insuring that cooperatives continue to serve targeted income groups.

Unlike the past, when they were started in communities with little or no support from local governments, it is now common for CLTs to work in cooperation with local governments to meet present and future needs of a community. In turn, State and local governments are providing financial assistance to CLT projects.

CLTs can also play a major role in structuring a PJ's first-time homebuyer programs using HOME funds. The CLT program design approach not only insures affordability for persons unable to compete in the market (i.e., very-low income persons), but it also insures affordability to subsequent owners as well.

- (f) As a means of insuring continued affordability in first-time homebuyer projects, the CLT follows resale restrictions developed by the PJ (in accordance with 92.254) that specifically outline the criteria to be met when the resale of a HOME-funded property takes place. The restrictions established by PJs shall be developed so as to:

Allow for subsequent purchase of the property only if it is the principal residence of an owner whose family is low-income at the time of purchase and at a price which will--

- 1 . Provide the owner with a fair return on investment, and
2. Ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; or

- (g) Recapture the HOME subsidy provided in order to assist other persons in accordance with the requirements of this subsection, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance.

The resale/recapture provisions can be structured along a continuum from limited equity cooperatives to options where it is possible for a first-time homebuyer to eventually have equity to purchase property at a conventional rate.

Although there are a number of options that can be used when developing these provisions, the PJ must, in each situation, take into consideration the characteristics of each jurisdiction, i.e., market conditions, population trends, types of single-family housing, etc., and the jurisdiction's CHAS. Then, all other criteria can be factored in. (References on structuring resale restrictions are included in this Notice for your use.)

5. ELIGIBLE HOME ACTIVITIES

Because CLTs are considered CHDOs by definition, they are also eligible to receive certain percentages of HOME funds for use in carrying out various HOME activities, including those that are listed in Section 92.206 of the HOME

regulations. First, CLTs; are eligible to receive funds from the 15% set-aside for investment in housing to be developed, sponsored, or owned by CHDOs.. Secondly, since CLTs are not required to have demonstrated capacity for carrying out HOME activities or a history of serving the local community within which HOME-assisted housing is to be located, up to 20% of the 15% set-aside can be used to develop CILT capacity. This 20% may only be used for capacity building if the PJ cannot identify a sufficient number of capable CHDOs and the amount is limited to \$150,000 which must be committed within 24 months of the PJ receiving its first HOME allocation. An additional amount up to 10% of the CHDO set-aside may be used for project-specific assistance. It is important to note, however, that under no circumstances can a CHDO use Home funds for purposes of land banking.

The following are examples of technical and organizational activities that can be carried out by CLTs using HOME funds:

Project-specific Assistance

CHDO set-aside funds may be used to provide project-specific technical assistance and site control loans in the early stages of site development. Also, a loan in this category may be provided to cover project expenses necessary to determine project feasibility (including the initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance. (General operational expenses are not allowable expenses under this category.)

Technical Assistance Funds

HOME technical assistance funds are provided primarily through intermediaries. For example, an intermediary can use these funds to start up a new CILT or to administer pass-through funds to a CILT to carryout various HOME activities.

CLTs interested in receiving assistance of this nature should contact their PJ to discuss whether intermediary assistance is available in their local area.

Operating Expenses

The Interim Rule allows up to 5% of a PJs allocation to be used for CHDO operating expenses. Examples of operating expenses (as shown in Section 92.2) are: salaries, wages, and other employee compensation

and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.

Examples of how these funds can be used by a CHDO include developing and marketing CLT housing; training for board members, technical and legal assistance in completing projects and arranging for the sale of homes on CLT land.

6. **AVAILABLE RESOURCES**

The following documents are available for CLTs that wish to pursue HOME funds to establish affordable housing. The documents may be obtained by writing to the addresses shown below:

- o First-Time Homebuyers and the Home Program (Model)--HUD-1369-CPD, HOME Information Center, P. O. Box 7189, Gaithersburg, MD 20898 7189, 1-800-998-9999 or TTY/TDD 1-800-343-3442
- o Designing Resale Formulas For Homeownership Programs -- Institute for Community Economics, 57 School Street, Springfield, MA 01105, (413) 746-8660
- o Community Land Trusts and Rural Housing -- Housing Assistance Council, 1025 Vermont Ave. NW, Washington, DC 20005, (202) 842-8600

For further information regarding CLTs, interested parties may contact the following:

The Institute for Community Economics

57 School Street
Springfield, MA 01105-1331
(413) 746-8660
Contact Person: Martin Hahn

ACORN

739 8th Street,,S.E.
Washington, DC 20003
(202) 547-9292
Contact Person: Stewart Pittman

Center for Community Change
570 Shepard Street
San Pedro, CA 90731
(213) 833-4239
Contact Person: Mary Brooks