



## **Burlington Associates**

in Community Development

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# **Frequently Asked Questions About Community Land Trusts**

## **MISSION & GOVERNANCE**

### ***What is a community land trust?***

A community land trust (CLT) is a nonprofit, community-based corporation committed to the permanent stewardship of land and the permanent affordability of housing and other buildings located upon its land. Most CLTs target their programs and resources toward charitable activities like redeveloping blighted neighborhoods or providing housing for lower-income people, allowing the organization to qualify for a 501(c)(3) tax exemption from the IRS.

Land acquired by a CLT is never resold. It is retained by the CLT and held in trust for the community. Although a CLT never resells its land, it provides for the exclusive *use* of its land by leasing out separate parcels to individual homeowners, cooperative housing corporation(s), nonprofit developers of rental housing, or other nonprofit, governmental, or for-profit entities. These ground leases last for a very long time, typically 99 years.

Any residential or commercial buildings already located on lands acquired by a CLT or any buildings later constructed on these lands are not retained by the CLT. They are sold off to organizations or individuals who are leasing the CLT's land. The owner of a house, a condominium, or a multi-unit residential or commercial building located on a CLT's land holds a deed for the building and a lease for the underlying land.

The CLT retains an option to repurchase these buildings, should their owners ever choose to sell. The resale price is determined by a formula contained in the ground lease. This formula, which usually yields a resale price that is lower than the building's market value, is designed to give the seller a *fair return* for his/her investment, while giving subsequent buyers *fair access* to a home or commercial space 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, in perpetuity.

### ***How is a CLT governed?***

Membership in the CLT is open to anyone who leases land from the CLT and to anyone who resides within the geographic area that is served by the CLT. The governing board of the CLT is typically composed of three parts, each containing an equal number of seats. One third of the board is elected by those members who are leasing land from the CLT ("*leaseholder representatives*"). One third is elected by members residing within the CLT's service area who are not living on the CLT's land ("*general representatives*"). The final third is made up of local government officials, nonprofit providers of housing or social services, and other individuals who are 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.

### ***Are all CLTs structured this way?***

No. There are many organizational variations. For example, while most CLTs are created “from scratch,” as new, autonomous corporations, some have been established as successors, affiliates, or programs of an older nonprofit. Either a pre-existing nonprofit transforms itself into a community land trust or grafts selected elements of the CLT model onto its own structure and programs. Similarly, although ground leasing is a characteristic of every organization that calls itself a community land trust, buildings that are renter-occupied are sometimes treated differently than buildings that are owner-occupied. Some CLTs, when developing multi-unit rental housing – or when leasing out commercial space – have decided to retain ownership not only of the underlying land but of the building as well. Conversely, some CLTs, when accepting limited-equity condominiums into their portfolios, do not own the underlying land. They retain ownership only of a durable right to repurchase these condominiums for an affordable, formula-determined price when their current owners decide to resell. There are also variations in the way in which CLTs have structured their membership or selected their governing board. In short, the CLT remains a dynamic model, one that is easily and frequently adapted to meet the priorities and needs of a particular community. Such malleability is a large part of the CLT’s strength and appeal.

## **PROJECTS & OPERATIONS**

### ***How does a CLT acquire land?***

CLTs acquire land in three ways. (1) They purchase land at its market price, using funds they receive from public sources (such as HOME, CDBG, tax-increment financing and the like) or funds that are donated or loaned from private sources (such as foundations, individual philanthropists, or financial institutions). (2) CLTs receive land as a gift from a private donor or governmental entity. (3) CLTs acquire land for a below-market price through a mechanism known as a “bargain sale,” where the seller accepts cash for a portion of the land’s value and claims a tax deduction for the remainder of the land’s value.

### ***How does housing get built on a CLT’s land?***

When a CLT acquires a parcel of land, there may already be a single-family house or a multi-unit building on the land. In other cases, CLTs become active developers, constructing new housing on lands they have recently acquired or previously “banked” for future development. CLTs may also make land available to another nonprofit organization like Habitat for Humanity or a community development corporation for the construction of affordable housing. In a growing number of communities, affordably priced homes come into a CLT’s portfolio because of inclusionary zoning, density bonuses, or other regulatory mandates or incentives. In these cases, CLTs become the long-term steward for occupancy, eligibility, and affordability controls imposed by local governments on housing built by for-profit developers.

### ***What types of housing are developed on a CLT’s land?***

There is enormous variability in the projects that CLTs pursue and in the types of housing they develop (or allow to be developed) on their land. Some CLTs focus only on detached, single-family houses. Others are engaged in the construction and stewardship of multi-unit residential projects that are structured as townhouses, condominiums, limited equity cooperatives, or nonprofit rental housing. CLTs have also been used for the preservation of mobile home parks and for the development of homeless shelters, transitional housing, and SRO housing.

### ***How fast does a CLT typically grow?***

Every CLT has an eye toward expanding the number of acres and buildings that are brought into its domain of nonspeculative ownership, but the scale and pace of acquisition can vary widely from one CLT to another. This is due largely to factors outside of a CLT's control like the cost of buildable sites and the availability of grants and loans. An acquisition strategy is also a function of a CLT's own priorities in choosing who to serve, what to build, and where to work. Some CLTs have grown quite slowly, annually purchasing a few parcels of land on which are constructed (or rehabilitated) a handful of single-family houses. Other CLTs have grown rather rapidly, benefiting from private donations or public largess that have allowed for the acquisition of larger parcels of land and the steady production of many units of housing, both multi-unit rentals and single-family homes. A few CLTs have done non-residential development as well. Regardless of the type and scale of project development, which can ebb and flow over the years, most CLTs are committed to adding more land to their holdings and to bringing more buildings under their stewardship.

### ***How does a CLT cover the cost of its own operations?***

Like other nonprofit organizations, CLTs rely on grant funding to cover their start-up and operating costs during their early years. Sources include private philanthropy (such as foundations, local employers, and faith-based organizations) and public sector funding from federal, state, and municipal sources. Once their holdings reach a substantial scale, some CLTs have been able to generate enough revenue internally (via ground lease fees, lease re-issuance fees, membership dues, and fees for service) to cover most of their stewardship responsibilities, especially the cost of monitoring and enforcing the occupancy, eligibility, and affordability controls that encumber a CLT's housing.

## **AFFORDABLE HOMEOWNERSHIP**

### ***Who is eligible to purchase a CLT home?***

Every CLT determines its own priorities for who will be served – i.e., who will be the principal beneficiaries of the CLT's activities. Many CLTs target households with incomes below 80% of Area Median Income because of the urgency of need experienced by lower-income households and because of requirements set by federal affordable housing programs such as HOME. In communities where housing is already very expensive (and escalating rapidly) and where even moderate-income households may be excluded from the homeownership market, however, CLTs have often targeted a higher range of household incomes, including households with incomes up to 100% or 120% of Area Median Income. CLTs typically establish secondary selection criteria as well. They may give preference, for example, to larger families or to persons displaced from housing or to households currently residing or working in the CLT's service area.

### ***How do individuals who want to buy CLT housing obtain financing?***

Although homes for sale through a CLT are nearly always more affordable than market-rate housing, very few low-income or moderate-income households will be able to buy a CLT home out of their own savings. They will need mortgage financing. Consequently, CLTs work with local lenders to secure mortgages for their homeowners. Many private lenders across the country, many state housing finance agencies, and national agencies like Rural Development and Fannie Mae are making mortgage financing available for homes located on land that is leased from a CLT.

### ***What happens if a CLT homeowner defaults on his/her mortgage?***

Under the “standard permitted mortgage” used by most CLTs, the CLT must be notified by a lender whenever a CLT mortgage holder is in default. The CLT is then given 60 days to cure the default on the homeowner’s behalf. If the CLT does not cure and the lender proceeds to foreclosure, the CLT is then given an opportunity to purchase the foreclosed building. Even in a mortgage meltdown, the CLT retains ownership of the underlying land. This places the CLT in a strong bargaining position with respect to both the homeowner and the lender.

### ***What happens if CLT homeowners want to resell their homes and move away?***

The CLT has a preemptive option to purchase any homes that are located upon its land. The CLT may exercise this option itself, purchasing the home and reselling it to another income-eligible buyer. Alternatively, the CLT may waive its option to purchase and allow the homeowner to sell her home directly to another income-eligible qualified buyer. In either event, the CLT homeowner is obliged to sell the home for no more than the maximum price determined by a resale formula stipulated in the homeowner’s ground lease.

### ***What keeps a CLT home affordable for low-income homebuyers in the future?***

CLTs are able to preserve the affordability of owner-occupied housing by controlling the price for which a CLT home can be resold and by controlling the income-eligibility of the persons who may purchase the home. Every CLT crafts its own resale formula, tailoring it to meet the social priorities of the organization, the social needs of its community, and the economic realities of its real estate market. The resale formula most commonly used by CLTs across the country is either an “indexed formula” or a “shared appreciation formula.” In the first, the resale price of a CLT home increases at a rate that is pegged to annual changes in area median income, blue collar wages, consumer prices, or some other index. In the second, the resale price of a CLT home is determined by adding to the price initially paid by the homeowner a percentage of the home’s appreciated market value. For example, if the home appreciates in value by \$40,000 between the time of initial purchase and the time of eventual resale, the seller might be paid \$4,000, \$10,000, or \$20,000 over and above the price she originally paid when purchasing the home, depending on whether the share of appreciation specified in the CLT’s resale formula is 10%, 25%, or 50%. Regardless of the formula that is used, the CLT is usually able to repurchase the home for a price that is lower than the home’s market value. This below-market price is passed on to the next homebuyer, maintaining the relative affordability of the CLT home, one resale after another.

### ***Can the buyers of CLT homes become absentee owners, subletting for a profit?***

No. Embedded in the CLT ground lease is an occupancy requirement stipulating that a CLT home must be continually used and occupied by the owner as his/her primary residence. Under special circumstances, with prior approval of the CLT, a homeowner may sublet all or part of the home. The duration of this sublet, however, and the amount of rent a homeowner may charge are both controlled by the ground lease (and by the CLT).

### ***Who pays the property taxes?***

CLT homeowners are responsible for the payment of all real estate taxes – on both the home they own and the land they lease. CLT homeowners typically qualify for the same homestead exemptions, rebates, or deductions that are made available to any other homeowner, since CLT homeowners have “beneficial title” to their property. Some municipal tax assessors take account of the permanent cap that is placed on the resale price of CLT homes and, accordingly, tax these homes at a lower rate than unrestricted, market-rate homes. In jurisdictions where local assessors

ignore this permanent encumbrance, however, CLT homeowners are forced to pay property taxes not only on value that is theirs but also on value they can never claim for themselves.

### ***What happens if CLT homeowners stop making repairs on their homes?***

The ground lease requires homeowners to “maintain the leased premises and improvements in good, safe, and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations” of the local jurisdiction. Failure to comply with this provision is grounds for the CLT to declare a homeowner in default of the lease. The remedies employed by the CLT to correct the default may include fines, arbitration, or even the homeowner’s eviction from the leasehold.

### ***Can CLT homeowners make major improvements after purchasing their homes?***

Yes. Most CLTs allow – even encourage – their homeowners to make capital improvements to their homes as long as the CLT is notified in advance of the proposed improvement and as long as the improvements are designed and constructed in compliance with local zoning and building codes. A more difficult question is what portion (if any) of the cost of these post-purchase improvements will be added to the resale price of the home. This question is settled in different ways by different CLTs.

## **COMMUNITY BENEFITS/COMMUNITY CONCERNS**

### ***Why are local governments choosing to start or to support a CLT?***

In some places, the initiative for establishing a CLT has come from municipal government, as in Burlington, VT, Portland, OR, Chicago, IL, Sarasota, FL, and Irvine, CA. In many other places, CLTs have been made favored recipients of a municipality’s financial and regulatory largess. Especially in jurisdictions with inclusionary housing programs, where regulatory mandates or financial incentives have induced private developers to create affordably priced housing for lower-income homebuyers, CLTs are being used to preserve the homeownership gains that a local government has worked so hard to create. What accounts for this growth in municipal interest and municipal support? Why are a growing number of local governments investing their scarce resources in nurturing the development of CLTs? Six reasons are given again and again:

#### **1. Developing Communities without Displacing People**

A CLT has the ability to revitalize low-income neighborhoods without displacing the low-income people who have long lived there. A local CLT can also complement smart growth policies at the regional level. When established in an inner-city neighborhood or an inner-ring suburb, the CLT can serve as a bulwark against rising prices and speculative pressures that often mount when anti-sprawl measures redirect investment toward the urban core instead of the suburban periphery.

#### **2. Perpetuating the Affordability of Publicly-assisted, Privately Owned Housing**

Housing that is made affordable initially through public subsidies or regulatory measures like inclusionary zoning can be kept affordable continually. The ground lease used by the CLT is an effective, enforceable, and durable mechanism for ensuring that future generations of low-income and moderate-income households will have access to the same opportunity for affordable housing that is being created for these targeted populations today. Furthermore, the administrative systems that a CLT establishes to monitor and enforce the affordability,

occupancy, and eligibility controls that are built into its ground lease may be used to monitor and to enforce similar controls that are incorporated into the deed covenants of housing that is not on leased land. The CLT can serve as the long-term steward for *any* type or tenure of housing which a public agency has helped to create.

### **3. Retaining the Public's Investment in Affordable Housing**

Whenever public (or private) funds are used to subsidize the initial affordability of residential units (single-family houses, condos, etc.), those scarce subsidies are protected and recycled in those units forever. In contrast to policies and programs where subsidies are either claimed by the property's owner at resale (subsidy removal) or re-claimed by the public agency that invested them (subsidy recapture), the CLT is committed to locking those subsidies in place (subsidy retention). When assisted homes are resold, an additional infusion of public or private monies will usually not be needed.

### **4. Protecting the Occupancy, Use, Condition & Design of Affordable Housing**

The CLT provides a durable mechanism not only for preserving the affordability of housing, but for preserving the occupancy, use, condition, and design of that housing as well. Embedded in the ground lease – or embedded in the deed covenant, if the CLT is serving as the steward for deed-restricted housing – are provisions that: (a) require the housing to be continually occupied as the owner's principal residence; (b) restrict the housing's use as a sub-leased rental property; (c) require the housing to be kept in good repair; and (d) require the housing to be maintained in compliance with local building and zoning codes.

### **5. Enabling the Mobility of Low-income People**

Every CLT inserts at least one new rung into a locality's housing tenure ladder, bridging the gap that has opened up in many parts of the country between market-priced rentals and market-priced homeownership. Some CLTs fill this gap with multiple rungs, developing not only detached, owner-occupied houses on lands that are leased from the CLT, but developing duplexes, triplexes, limited equity condominiums, and limited equity cooperatives as well. (Some CLTs also develop and manage rental housing.) By multiplying the choices available to people when they seek to change the type and tenure of their housing, CLTs allow persons of modest means to move more easily from one form of tenure to another, improving their housing in smaller, more manageable steps. As an increasing number of CLTs expand their service areas, creating affordable housing on a regional basis, mobility can also assume a geographic dimension. Low-income households are given both a choice of housing and a choice of place. CLTs create an opportunity for economic mobility too. Despite the limit imposed on the resale price of a CLT home, the assets of CLT homeowners are enlarged. Most of these first-time homeowners build wealth, as they occupy a CLT home and when they resell.

### **6. Backstopping the Security of First-time Homeowners**

Too many first-time homeowners, especially those of limited income, fragile health, or physical or mental disability, eventually find they cannot bear the burden of owning a traditional, market-rate home – at least not by themselves. Too many of them eventually fail in maintaining and retaining the homes that were theirs, with disastrous results for the surrounding community and for the households who default and fall back into renting. By contrast, when a CLT puts low-income households into homeownership situations, usually with the help of public subsidies, these first-time homeowners are not forced to go it alone. The CLT protects their homes in times of trouble, intervening to cure defaults and prevent foreclosures. The housing is protected. The households are protected. The lenders are protect-

ed. And the public's investment is protected. A CLT remains permanently responsible for the homeownership opportunity it helped to create, safeguarding everyone's stake in a successful outcome.

### ***How do CLTs respond to common concerns?***

Given the relative unfamiliarity of this new approach to affordable housing and community development, it is not surprising that people have questions, confusions, and concerns. The most common of these are reviewed below.

**“A CLT will remove land from the market and just sit on it.”** CLTs acquire land specifically for the purpose of developing housing, services, and facilities that are needed by a community. CLTs are not land conservation organizations. CLT neither remove land from the development process nor exclude individuals from using the land for residential, commercial, or recreational purposes.

**“A CLT will remove land and buildings from local tax rolls.”** Community land trusts and CLT homeowner/leaseholders pay property taxes. There are few jurisdictions where CLTs have been offered – or where CLTs have accepted – an exemption from local property taxes for the lands that are owned by the CLT. There is no jurisdiction where the resale-restricted, owner-occupied homes that are located on a CLT's land have been entirely removed from local tax rolls. There *are* jurisdictions, however, where the value of these lands and/or the value of these homes have been deemed to be lower than the market value of similar properties not encumbered with long-term leases and permanent controls over their affordability.

**“A CLT will develop housing at a higher density than is acceptable.”** Allowing greater density is a matter of public policy. A CLT may sometimes ask to build at a higher density than has been customary in a particular community in order to promote better land use practices and to reduce the cost of providing housing for low-income homebuyers. Whether or not such a request is granted, however, is a decision entirely in the hands of local officials.

**“CLTs take away the opportunity for low-income people to build wealth.”** CLTs help low-income households to gain access to assets they would probably never have been able to acquire without the CLT. Despite the limit that is placed on their home's resale price, which usually limits the homeowner's equity as well, most people who purchase a CLT home walk away with considerably more wealth than they would have otherwise possessed. They get back their *downpayment* when they resell. They get back whatever *forced savings* they have accumulated in making monthly payments on a mortgage. They may have accumulated *voluntary savings*, as well, because their housing costs have been stabilized. Under most resale formulas, moreover, they may be able to recover some (or all) of what they have spent in making *major improvements* and may be able to resell their ownership interest for more than its initial price, realizing a significant *capital gain*. Compared to the renters they were and the renters they would likely have remained had they *not* purchased a CLT home, most low-income households will be better off financially for having bought a home through a CLT.