

Condominiums and the CLT

Excerpted from: *Development without Displacement: Issues and Options in Creating a Community Land Trust*. (© 2001 Institute for Community Economics) Report prepared for the MacArthur Foundation and the City of Chicago by John Emmeus Davis, Burlington Associates in Community Development LLC.

Experience to Date

Condominiums are presently a part of the housing development programs and the resulting real estate portfolios of ten Community Land Trusts. Only a handful of these have developed more than ten condominiums, however: the **CLT of Cape Ann** (Gloucester, MA); the **Burlington CLT** (Burlington, VT); **Thistle Community Housing** (Boulder, CO); the **Northern California CLT** (Berkeley, CA); and the **Madison Area CLT** (Madison, WI). CLTs have taken three different approaches to preserving the affordability of their condo units: leased land with a master lease; leased land with individual leases; and non-leased land with individual affordability covenants. Examples of each are discussed below.

❖ LEASED LAND WITH A MASTER LEASE

The **Community Land Trust of Cape Ann** has developed four different condominium projects, containing a total of 50 units (including 14 condominiums presently under development). Three of these condominium projects – an 8-unit project, a 26-unit project, and a 14-unit project – are located on leased land. For each project, the Cape Ann CLT has executed a master lease, conveying the underlying land to the condo association upon condition that the individual units remain affordable over time. A condominium owner's legal obligation to resell his/her unit at an affordable price is imposed through the documents that create the condominium regime, define the owner's relationship to the association, and secure the owner's shared interest in the project's common property (including the land). A similar approach has been used by the **Madison Area Community Land Trust**, which has developed a single 14-unit condo project on leased land. Eleven of the units are restricted to – and kept affordable for – households at 80% of median; three are restricted to and kept affordable for households at 115% of median. A master lease is used to convey the land to the condo association. Individual owners of the condominium units subscribe to the terms of this master lease, including the obligation to resell their units at a below-market price to the MACLT, via a Letter of Acknowledgment that is signed at the time of purchase and attached to the master ground lease.

❖ LEASED LAND WITH INDIVIDUAL LEASES

Condominiums have also been developed on land that is leased from a CLT, using individual ground leases rather than a single master lease. For example, **Thistle Community Housing** has developed 64 condominiums, all on leased land. Instead of a master lease between Thistle and the condo association, Thistle executes a separate ground lease for each condominium. This ground lease is identical in form and content to the lease that the owner-occupant of a single-family, detached house would normally sign with a CLT, except for the description of the leased premises. For a 15-unit condominium project, for example, this description would grant each

condo owner an individual, undivided 1/15 leasehold interest in the land underlying the project. The **Northern California CLT** has used the same approach in developing a 14-unit condominium project on leased land.

❖ **NON-LEASED LAND WITH INDIVIDUAL AFFORDABILITY COVENANTS**

CLTs have also protected the affordability of condominiums where the CLT does not own the underlying land. For example, the **Burlington Community Land Trust** has brought 125 condominiums into its protected domain of perpetual affordability. None is located on leased land. The BCLT attaches a state-sanctioned affordability covenant to the unit deed for each condominium, allowing the BCLT to repurchase the unit at a formula-driven price, should the owner ever decide to sell. The majority of these units came into BCLT's domain through the City of Burlington's inclusionary zoning ordinance, which gives the BCLT (as the city's designee) the first right to acquire inclusionary units at a below-market price. The same approach was used by the **Community Land Trust of Cape Ann** for its first two condo projects, before it began developing condominiums on leased land. An affordability covenant, authorized by Massachusetts law, was attached to the unit deed for each condominium.

Key Issues for CLTs Developing Condominiums

- ❖ **CONDO DEVELOPMENT ON LEASED LAND.** In some states, the development of condominiums on leased land is permitted by the state's condominium enabling statute only within very narrow limits. In New York State, condominiums on leased land are prohibited altogether. (This used to be true in Massachusetts as well, but the state's condominium statute was amended to allow it – due, in part, to the efforts of the Institute for Community Economics.) Before developing limited equity condominiums on land that is leased from a CLT, a state's condominium laws must be examined to see whether a leased-land condominium is even allowed.
- ❖ **ENFORCEABILITY OF RESTRICTIVE COVENANTS.** In Vermont and Massachusetts, two states where CLTs have developed resale-restricted condominiums that are not on leased land, there exist state enabling statutes that explicitly authorize the use of “affordability covenants” in housing that is subsidized for lower-income households. In these states, the durability and enforceability of such covenants is not in question. In states without such a statute on the books, however, the long-term enforceability of covenants appended to the unit deeds of individual condominiums, granting a CLT (or any other entity) the right to repurchase the condominium at a restricted price, may be an issue.
- ❖ **VESTED INTEREST OF THE CLT.** Even where the enforceability of the CLT's preemptive right to repurchase condo units at a below-market price is not in question, the CLT must be willing and able to exercise this right. This is true, of course, for the resale of every type and tenure of housing that is located on the CLT's land. Unless the CLT is actively engaged in supervising the transfer of resale-restricted units, the likelihood of these units **remaining** affordable over time is not great. This issue becomes particularly pressing and problematic in condominium projects where the CLT

does not own the land. The issue is this: without owning the land beneath a condo unit will a CLT be just as vested in protecting the affordability of that unit as it would be for units that are located on its land?

- ❖ **RESTRICTIONS ON CONDO CONVERSION.** Several states – and many more cities – closely regulate the conversion of residential rental units slated to become condominiums. Most of these condo conversion laws give current tenants the right to remain in residency during a notice period that may range from six months in some jurisdictions to three years in others. Tenants may also be given the first right to purchase their units once they are converted to condos. (In one city, Burlington, VT, the building as a whole may be purchased by the city or by its nonprofit designee on behalf of the tenants.) CLTs are not exempt from these restrictions on conversion, despite the CLT’s dual commitment to preventing displacement and preserving the affordability of any units that come into its price-protected domain.
- ❖ **MARKETING LIMITED EQUITY CONDOMINIUMS.** The “bundle of rights” that is held by the owner of a condominium is already missing a number of “sticks” that are typically found in the “bundle” possessed by the owner of a single-family detached house. Even more “sticks” are missing in the case of a limited equity condominium, regardless of whether the condominium is located on leased land. In some markets, selling such units can be a challenge.
- ❖ **CONDO ASSOCIATION FEES.** In mixed-income condominium projects, especially in those where “affordable” units are in the minority, there may be continuing pressure from the more affluent homeowners to add amenities and services, pushing up the project’s association fees beyond what the project’s lower-income homeowners can afford. Protections must be added (and monitored) by the CLT to ensure that association fees remain affordable.