

Advocating for Community Land Trusts

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| A Brief History | 365 |
| I. What Is a CLT, Exactly? | 370 |
| II. If CLTs Do Not Need Legislation to Function, Why Bother? CLTs Need Legislation to Thrive..... | 374 |
| III. Access to Land: New York City and a Proposed CLT Right of First Refusal | 376 |
| IV. Enabling Legislation and Consistent Tax Policies: The Guadalupe Neighborhood Development Corporation and the University of Texas Law School..... | 378 |
| V. Access to Housing Funds and Equitable CLT Property Taxation: Minnesota’s HOM Coalition..... | 380 |
| VI. Removing Regulatory Barriers: Grounded Solutions Network and Restrictions on HOME Funds | 383 |
| VII. Land Justice: San Juan, Puerto Rico, and El Proyecto ENLACE del Caño Martín Peña..... | 387 |
| Conclusion | 389 |

A Brief History

A Community Land Trust (CLT) is a nonprofit organization that creates homeownership opportunities for generations of people who would otherwise be priced out of the real estate market.¹ The legal mechanisms involve separating the land from the improvements to create two taxable, mortgageable parcels on the same piece of property. The nonprofit owns the land and sells the improvements, typically in the form of a house or condominium, to buyers who meet certain income qualifications. The landowner and homeowner are connected through a ground lease containing affordability restrictions designed to keep the homes affordable going forward.

The model got its start in rural Georgia in 1970 without the help of CLT-specific legislation at any level—federal, state, or local. A group of civil rights activists and organizations formed New Communities, Inc. (NCI) in Albany, Georgia, in 1970 “to hold land in perpetual trust for . . . rural

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1. See COMMUNITY LAND TRUST HANDBOOK (Kirby White ed., 2011) (containing the 2011 Model Ground Lease and commentary on its application) [hereinafter CLT HANDBOOK].

communities."² Farming families faced the threat of eviction for their participation in the civil rights movement, and by creating NCI they found a way to become a self-sustaining community. The members were Black farmers, and the model used included leaseholds for homesteads along with churches, a community school, a farmers' market and a greenhouse on the 5,700-acre farm.³ CLTs later spread to cities and across the United States, slowly at first and growing steadily over the next couple of decades, relying primarily on existing real estate law.⁴

Early legislative efforts resemble more of a patchwork than a plan. To begin with, the federal government committed funds for NCI through the Office of Economic Opportunity in 1971, but the segregationist governor of Georgia made sure that money never made it to NCI.⁵ Over a decade passed before CLT legislative advocacy gained a foothold. In Vermont in 1983, the Burlington city council passed a \$200,000 appropriation to fund a city-wide CLT,⁶ and in 1987, Vermont became the earliest state to pass legislation that supported the CLT model, in part by providing a funding source for owner-occupied homes.⁷ The city of Boston took a major step in 1989 when it granted the power of eminent domain over the Dudley Street Neighborhood to Dudley Street Neighborhood, Inc. (DSNI), a community

2. NEW COMMUNITIES INC. (NCI), <https://www.newcommunitiesinc.com> (last visited Nov. 29, 2022).

3. NCI is a 501(c)(4). The organization was incorporated in 1969 with Slater King, Fr. Albert McKnight, Fay Bennett, and Leonard Smith as the founding board of directors. C.B. King drafted the bylaws. Charles Sherrod replaced Slater King after his death that same year. See NEW COMMUNITIES INC., *supra* note 2. Influential advocates from outside the community included Bob Swann and Faye Bennett who traveled with NCI members to Israel in 1968 to study the moshav model of community land ownership. For detailed history and background of the intellectual roots of the movement, see THE COMMUNITY LAND TRUST READER (John Emmeus Davis ed., 2010), <https://www.lincolnst.edu/publications/books/community-land-trust-reader>.

4. The Center for Creative Nonviolence and Sojourners attempted to start an urban CLT in Washington, DC, in 1976 but was unsuccessful. The Community Land Cooperative of Cincinnati was founded in 1980 by members of the West End Alliance of Churches and Ministries. That CLT sold what was likely the first urban CLT home in 1981. *Timeline*, CTR. FOR CMTY. LAND TR. INNOVATION (2022), <https://cltweb.org/timeline> [hereinafter CLT Timeline].

5. *Id.*

6. *Champlain Housing Trust*, CTR. FOR CMTY. LAND TR. INNOVATION (2022), <https://cltweb.org/case-studies/champlain-housing-trust>.

7. Bernie Sanders was the mayor of Burlington, Vermont, at the time and a big supporter of the model. CLT Timeline, *supra* note 4. The Vermont Housing and Conservation Trust Fund created a funding source for owner-occupied homes for families making 80–120% of the area median income; it also provided resources for historic preservation, local farms, wildlife habitat, and community open spaces. See VT. STAT. ANN. tit. 10, ch. 15 (1987). As of 2022, the Champlain housing trust is one of the largest CLT in the country with over 600 homes and 2,400 rental apartments in its portfolio.

land trust.⁸ DSNI gained possession of thirty acres for the use of its existing residents whose neighborhood had been vacant and blighted land.⁹ Community members worked together at DSI to create a development plan that would avoid the displacement of for-profit projects. The CLT continues to steward ninety-eight permanently affordable homes as well as urban farms, parks, and open space, and it rents commercial properties to local businesses, nonprofits, and affordable rental housing providers.¹⁰ A detailed definition of “community land trusts” appeared in a 1992 amendment to the 1990 National Affordable Housing Act.¹¹ The CLT language got buried in the earlier legislation, and though the definition remains part of the law, it is included in U.S. Department of Housing and Urban Development’s streamlined “Final Rule” on affordable housing only by reference.¹² In the intervening three decades, the number of local and state codes that

8. DUDLEY STREET NEIGHBORHOOD INITIATIVE, <https://www.dsni.org/about-us> (last visited Dec. 1, 2022).

9. *History of DNI*, DUDLEY STREET NEIGHBORHOOD INITIATIVE, <https://www.dudleyneighbors.org/history-of-dni.html> (last visited Dec. 12, 2022).

10. Dudley Neighbors Inc., <https://www.dudleyneighbors.org> (last visited Dec. 1, 2022).

11. The Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. § 12773 (as amended in 1992). [hereinafter Cranston-Gonzales]. Title II of Cranston-Gonzales defines a community land trust as a nonprofit that: acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases; transfers ownership of any structural improvements located on such leased parcels to the lessees; and retains 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. It also referenced the tripartite board structure: one-third homeowners, one-third experts on affordable housing, and one-third community members with varied areas of expertise. This structure combines the strength of grassroots community representation, skilled housing and community development experts, representatives from local government agencies familiar with public funding sources, and people from the community who work in law, banking, real estate, or other relevant fields. The idea grew out of lessons learned in the early days of CLTs when at times even strong grassroots organizations struggled to gain access to funding and other types of support outside of their base. See CLT HANDBOOK, *supra* note 1, at 1–2. CLTs were also referenced in 7 C.F.R. § 3555.206 as special lending requirements for CLTs. This section is part of the regulations for Agriculture under the Guaranteed Rural Housing Program. HB 1-3555 SFH GUARANTEED LOAN PROGRAM TECHNICAL HANDBOOK (Aug. 7, 2020), <https://www.rd.usda.gov/sites/default/files/3555-1chapter13.pdf>; see also 7 C.F.R. § 3555.206, available at <https://www.law.cornell.edu/cfr/text/7/3555.206>. Fannie Mae created a model CLT ground lease rider and a valuation guideline in 2001, making it easier for CLT homebuyers to use conventional mortgages. Community Land Trust Ground Lease Rider, Fannie Mae Form 2100 (Dec. 2010), <https://singlefamily.fanniemae.com/media/14536/display>.

12. 78 Fed. Reg. 44,628–44,683 (July 24, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-07-24/pdf/2013-17348.pdf>; *id.* at 44,630 (“Revising the definition of ‘homeownership’ to explicitly permit ground leases of 50 years or more for community land trusts.”).

include CLT-specific legislation has increased slowly. The Maryland legislature passed an Affordable Housing Land Trust Act in 2010 allowing resale restriction to be included in ground leases.¹³ Texas enacted two separate pieces of CLT legislation in 2010 and 2012, the latter of which created a state code definition of a CLT.¹⁴ Yet, by 1995, in spite of the sparsity of CLT legislation, one hundred community land trust nonprofits spread throughout multiple states.¹⁵

In 2010, this journal dedicated an issue to the topic of shared equity housing¹⁶ for low-income people and policies designed to preserve housing

13. Affordable Housing Land Trust Act, 2010 Md. Laws chs. 609, 610 (codified at MD. CODE ANN. EST. & TRUSTS § 11-102(b)(13), MD. CODE ANN., REAL PROP. §§ 3-102(a)(2)(vi); 6-101(a); 8-110(a)(4); 8-111.2(a)(4); 14-501 to 14-511 (2010)). The Act defined affordable housing land trusts, the nature of land trust agreements, and permissible activities that encompassed a variety of legal instruments to facilitate permanent affordability. It was the result of a six-year joint effort between University of Baltimore Community Development Clinic and the Maryland Asset Building and Community Development Network. The original language aimed at community land trusts was broadened to affordable housing trusts in response to concerns voiced by opponents of the bill. See James J. Kelly Jr., *Maryland's Affordable Housing Land Trust Act*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 345, 355–57 (2010).

14. Homestead Preservation Act, TEX. LOC. GOV'T CODE ANN. §§ 373A.001–373A.213 (2010); TEX. LOC. GOV'T. CODE ANN. § 373B.005 (2012) (amended 2021) includes a definition of a CLT as a nonprofit organization that retains title to the land and sells the housing units and leases the land. As of 2022, the states of California, Connecticut, Florida, Georgia, Illinois, Iowa, Maine, Maryland, Minnesota, Montana, Nevada, North Carolina, Oregon, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, and Wyoming have some form of CLT-specific legislation. For the list as of 2018, see Andrew Decker, *Community Land Trusts and State Legislation: A Model Act to Enable This Affordable Housing Tool*, 26 J. AFFORDABLE HOUS. & CMTY. DEV. L. 489, 491 (2018).

15. CLT Timeline, *supra* note 4. In a May 5, 2022, interview with Pew Research Center, Vince Wang, the Director of Research for Grounded Solutions Network, estimated the number of CLTs in this country in 2022 is between 300–450. Alex Brown, *Cities Support Community Land Trusts to Protect Affordable Housing*, PEW CHARITABLE TRUSTS (May 25, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2022/05/25/cities-back-community-land-trusts-to-protect-affordable-housing> [hereinafter Alex Brown Article]. In addition to more “traditional” CLTs, Habitat for Humanity International declared its intention to shift from a wealth-building model to shared-equity models in its 2017 *Shelter Report*, and, since then, many affiliates have adopted the permanently affordable CLT model. John Emmeus Davis, *Affordable for Good*, HABITAT FOR HUMANITY SHELTER REPORT (2017), <https://www.habitat.org/sites/default/files/ShelterReport2017.pdf>.

16. “Shared equity” is a term used in the affordable housing context that includes limited-equity cooperative housing (LECs), price-restricted houses, and condominiums with affordability covenants of thirty plus years, and community land trusts. This article focuses exclusively on the latter. For an in-depth examination of this term, see John Emmeus Davis, *More Than Money: What Is Shared in Shared Equity Homeownership?*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 259–390 (2010).

affordability for the long term.¹⁷ Two articles from that issue address legislative advocacy. An article by Rick Jacobus and David Abromowitz proposed legislative strategies at the federal level to support CLTs and other types of shared-equity homeownership models.¹⁸ Ryan Sherriff gave an exhaustive account of state and local policies that either supported or hindered shared-equity models and outlined a series of advocacy strategies for the future.¹⁹ Prior to that journal issue, John Emmeus Davis and Rick Jacobus addressed strategies for gaining municipal support for CLTs in a 2008 report for the Lincoln Institute of Land Policy.²⁰ These essays remain highly relevant, a must-read for CLTs engaged in advocacy today.

This article offers an overview of legislative strategies from the intervening years and explores recent efforts to effect change and secure resources for the benefit of community land trusts at all levels of the U.S. government. As noted in Part I, local governments have authority over zoning, development, and fees. Some municipalities have resources for affordable housing in the form of funding and surplus public property. CLT legislation at this level is often geared toward CLT fee waivers and access to those resources. Part II explains how the legal mechanisms that are essential to creating a CLT are the purview of state legislatures and courts, and therefore legislation directed at enabling permanent affordability provisions and other real estate-specific issues is typically aimed at amending state codes. CLT lobbying efforts at the federal level are focused on accessing large sources of funding and adopting CLT-friendly agency policies and procedures. Issues around taxation of CLTs can involve every level of government.²¹ The CLT lobbying efforts detailed in this article are a mix of each. Part III examines local legislation aimed at preventing displacement of Black, Indigenous, and People of Color (BIPOC) homeowners and gentrification of low-income neighborhoods by securing a community land trust's right of first refusal (RFR) for public property. Part IV looks at lobbying efforts to pass CLT-specific tax exemption and appraisal methods at the local level to help keep homeowner costs down and a statewide campaign to create a uniform tax appraisal process for CLTs. It also covers a state code definition of CLTs that facilitates legal transactions. Part V looks at statewide lob-

17. Forrest David Milder, *The Future of Affordable Housing & Community Development*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 255 (2010).

18. Rick Jacobus & David M. Abromowitz, *A Path to Homeownership: Building a More Sustainable Strategy for Expanding Homeownership*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 313 (2010).

19. Ryan Sherriff, *Shared Equity Homeownership State Policy Review*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 279 (2010).

20. John Emmeus Davis & Rick Jacobus, Lincoln Institute of Land Policy, *The City-CLT Partnership: Municipal Support for Community Land Trusts*, POL'Y FOCUS REP. (2008), <https://www.lincolninst.edu/publications/policy-focus-reports/city-clt-partnership>.

21. CLT tax policy concerns include valuation of a home coming into a CLT program for the first time; revaluation over time through consistent appraisal methods; and applicability of exemptions to the land and the improvements.

bying efforts that have resulted in the granting of public funding for CLTs. Part VI reviews efforts at the national level to broaden housing trust funds to include operating costs and capital for CLTs and suggested changes to federal laws and regulations to increase CLT access to HOME Investment Partnerships Program (HOME) funds. Part VII examines ongoing lobbying at the U.S. territorial level to achieve housing justice while pushing for environmental justice.

These legislative strategies reflect the work of the many individuals and organizations and draw on several decades of collective work done by the communities that make up community land trusts. The people interviewed for this article have graciously agreed to share their experiences in the hopes of helping CLTs in other parts of the country with their own ongoing advocacy efforts. These ordinances, bills, and laws are not one-size fits all templates. The needs of each CLT are different and depend on a wide range of factors including existing laws and shifting political climates. The legislative language in this article offers a view of what has been done and what might be possible.

I. What Is a CLT, Exactly?²²

CLTs often require large amounts of subsidy upfront and seek to preserve that subsidy in perpetuity. These projects are not economically viable according to for-profit developers because the sale of the homes in a price-restricted program do not create an immediate return on investment. But, in the long term, CLT homes preserve subsidy in the form of money, land, and time, as well as intangibles like goodwill, improved health and educational outcomes, volunteer labor, and community stability. In addition, CLT stewardship has resulted in excellent homeowner rehabilitation and foreclosure prevention numbers nationwide.²³

If the CLT model appears confusing,²⁴ counterintuitive, and in some instances just plain wrong to many lawyers, the issue appears to be one of

22. Rosalind Greenstein & Yesim Sungu-Eryilmaz, Lincoln Institute of Land Policy, *Community Land Trusts: Leasing Land for Affordable Housing*, LAND LINES (2005), <https://www.lincolnst.edu/publications/issues/land-lines-april-2005>.

23. Emily Thaden, *Stewardship Works*, SHELTERFORCE (Dec. 24, 2010), https://shelterforce.org/2010/12/24/stewardship_works.

24. CLTs are often confused with conservation land trusts. Bob Swann differentiated between community and conservation land trusts in a paper that he delivered at a National Conference on Land Reform held in San Francisco in 1973. The two models are quite different, with different goals and legal mechanisms. Collaboration between the two types of land trusts is a relatively recent phenomenon, one worth noting. For information on this development, see Madeline Bodin, Land Trust Alliance, *At Home on the Land: Community Land Trusts and Conservation Land Trusts Strengthen Each Other Through Innovative Strategies for Owning Land*, SAVING LAND (2022), www.landtrustalliance.org/news/home-land. Conservation land trusts protect wildlife habitat and preserve wild spaces and other natural resources. These organizations will buy or accept a donation of the right to further development rights to a piece of land with conservation value.

context, not content. The model takes a different approach to home ownership from traditional market-rate residential real estate. But ask a commercial real estate attorney, an attorney who specializes in condominium development, or one who deals with state land leases, separating land from improvements is standard practice in most states. Perhaps the closest analogy is a mobile home park where the mobile home is considered real property and owned separately from the land. State tax codes provide for the separate assessment and taxation of the parcels in each of these contexts. In fact, all of the legal mechanisms necessary to create and sustain a CLT derive from the common law and fit within the strictures of U.S. real property laws, with very limited exceptions.²⁵ Lawyers such as C.B. King, and later Kirby White and David Abramowitz, played important roles in adapted existing legal mechanisms to serve the CLT model.²⁶

Separation of land and improvements Property rights have been described as a bundle of sticks. Land can be sold with or without the rights to minerals, water, and airspace, among others. CLTs rely on the horizontal separation of property to create two distinct real estate parcels.²⁷ This separation permits the nonprofit to share equity with the homeowner, who is able to take out a mortgage on the improvements and earn a small profit at resale. A variety of traditional lending is available for CLT buyers. Federally insured loans come with riders that remove the affordability

Development rights are sold or donated through an easement, which gives the conservation land trust the right to monitor the land use over time to make sure the owner adheres to the terms of the agreement and preserves the land. The landowner receives either money or a tax exemption in exchange for development rights. They keep the rest of the ownership rights that come with the land, including exclusive use. The existing infrastructure (e.g., houses, barns, outbuildings) remains intact. *See generally* LAND TRUST ALLIANCE (2022), www.landtrustalliance.org. The classic community land trust model, on the other hand, does not involve purchasing easements. CLTs typically hold title to all of the rights attached to the land and sell the improvements. The goal is to ensure long-term affordability and create homeownership opportunities for people priced out of the real estate market. CLTs can be used to hold not just land under homes but farmland, commercial property, historic preservation, and community resources such as parks and gardens. CLT legal mechanisms are described below.

25. W. VA. CODE §11-5-12 (2014) prohibits the separation of land from improvements for the purpose of creating two parcels of real property.

26. C.B. King wrote the first leases and other legal documents for New Communities, Inc. in 1970. *See* CLT Timeline, *supra* note 4. David Abramowitz adapted the commercial ground lease separating land from improvements to fit the CLT model and was the lead lawyer of the team that authored the *CLT Legal Manual* in 1991 that explained the different sections of the lease. That manual was refined over the years and served as the basis for the 2011 CLT HANDBOOK, *supra* note 1.

27. There are instances where a CLT will not own but lease land, as well as CLTs that offer stewardship services to other mission-aligned organizations. Like the typical CLT model, these iterations generally still involve horizontal separation of the land from improvements.

restrictions from the improvements to protect the lender in the event of default.²⁸ Separating the two parcels also allows the CLT to use its tax-exempt status for the land while the homeowner pays taxes on their home, based on a CLT-specific appraisal formula.

The Ground Lease CLT Right of First Refusal The relationship between the landowner and the owner of the improvements is governed by a ground lease with standard provisions covering lease fees, terms of use, and events of default, subjecting both parties to state landlord-tenant laws. CLT lease provisions that protect long-term affordability are less common and need to be crafted to avoid running afoul of state property laws. For example, CLTs generally include a preemptive right of first refusal. The right gives CLTs the ability to get involved in cases where long-term affordability is threatened if the home is in danger of being foreclosed on and losing its affordability restrictions. A right of first refusal can be contractually agreed upon as long as the length of the lease does not exceed what is permitted under the state's common law or codified Rule Against Perpetuities (RAP).²⁹ In states where the legislature has abolished the rule, the lease term is not at issue. In other states, the permissible length of ground lease varies depending on the state code and can be as short as 10 or as long as 150 years.³⁰ The CLT model ground lease avoids violating the RAP by recommending the execution of a new X-year ground lease at time of transfer, including the transfer to a designee upon death or a foreclosure by a bank, thereby creating a new, or renewed, property arrangement, and restarting the time period calculation under the RAP well within the limit.

The Ground Lease Restrictions on Use and Alienation. Other CLT restrictions on use and alienation include requiring the home be used exclusively for residential purposes; be the owner's primary residence; and be sold at a below-market price to another income-qualified buyer. The 2011 Model Ground Lease and Commentary is still the national gold standard for ground leases.³¹ Courts have found restraints on the use and alienation of property to be reasonable in many settings, including deed restrictions,

28. Both Fannie Mae and Freddie Mac have standardized CLT appraisal formulas and mortgage riders. Fannie Mae Lease Rider, *supra* note 11.; Guide and Forms: Single-Family Seller/Service Guide Form 490, Community Land Trust Ground Lease Rider, Freddie Mac Form 490 (2021), <https://sf.freddiemac.com/working-with-us/origination-underwriting/mortgage-products/community-land-trust-clt-mortgages>.

29. Jesse Dukeminier, *A Modern Guide to Perpetuities*, 74 CAL. L. REV. 1867, 1868 (1986) ("We start with Gray's classic statement of the Rule [Against Perpetuities]: 'No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest'" (quoting J. GRAY, *THE RULE AGAINST PERPETUITIES* § 201, at 19 (4th ed. 1942)). Some states have done away with the Rule Against Perpetuities, while others have added an alternative to the life in being requirement, saying the interest must vest within X years of the creation of the interest. See CLT HANDBOOK, *supra* note 1.

30. The Rule Against Perpetuities in Washington State is 150 years. See WASH. REV. CODE § 11.98.130 (2001).

31. CLT HANDBOOK, *supra* note 1.

easements, and zoning laws.³² Homeowner Association covenants, codes, and restrictions tell homeowners what color to paint their doors and limit the number and types of pets that they can keep.³³ In this respect, CLTs are often less restrictive.³⁴ According to the *Restatement of the Law of Property* § 406, a restraint on alienation of real property is invalid if it serves no reasonable purpose or if the burden on transfer is so great that it outweighs the value of the restriction. In general, the validity of restraints on alienation is determined by reference to four factors: (1) the use of the restraint to protect an interest in land; (2) the duration of the restraint; (3) the public policy's support for the underlying purpose of the alienability; and (4) the probability that the restraint will prevent likely transfers.³⁵ CLT affordability restrictions serve clear, reasonable purposes. These homes have been sold and resold over the past several decades without facing legal challenges, a strong argument that the benefits outweigh the burdens. Courts considering CLT restrictions can take into account that these projects promote affordable housing policy by fostering economic development, property improvement and stable neighborhoods. The restrictions also protect public and private subsidies by maintaining affordability.³⁶

32. *Canova Land & Inv. Co. v. Lynn*, 299 Va. 604 (2021) (“We have recognized that ‘public policy is at the heart’ of challenges involving restraints on alienation (quoting *Lipps v. First American*, 223 Va. 131, 137 (1982)). In *Lipps*, we noted that determining whether a restraint is reasonable requires ‘considering whether [the restraint] is such only as to afford a fair protection to the interest of the party in favor of whom it is given, and not so large as to interfere with the interest of the public.’” *Id.* at 136 (quoting *Merriman v. Cover*, 104 Va. 428 (1905)). The court in *Canova* noted that Virginia recognizes reasonable restraints as generally valid, including a charitable exception to the rule against restraints on alienation (quoting RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 3.4, cmt. c, 2000)).

33. See HOA 101: Rules and Regulations, ASSOCIA (2022), <https://hub.associaonline.com/blog/hoa-101-rules-regulations> (last visited Nov. 11, 2022) (listing standard guidelines relating to architectural controls; lawn and holiday decoration restrictions; home maintenance standards; noise complaint policies; home occupancy limits; parking rules and guidelines; pet size and quantity limits; short-term rental restrictions; trash and recycling rules).

34. Joseph William Singer, *Retroactive Restraints on Leasing in HOAs*, PROPERTY LAW DEVELOPMENTS (May 22, 2017), <https://scholar.harvard.edu/jsinger/blog/retroactive-restraints-leasing-homeowners-associations>.

35. (“The courts continue to divide over the question of whether it is fair to allow homeowners associations to impose retroactive restraints on leasing on existing owners who purchased with no notice of the restriction. While most states allow this, a few do not, and the *Restatement (Third) of Property (Servitudes)* §6.10(2), §6.10 cmt. g, takes the position that such major changes in property rights can only be accomplished prospectively unless there is a unanimous vote to alter those rights.”)

36. See generally 3 JOHN A. BORRON, JR., SIMES & SMITH: THE LAW OF FUTURE INTERESTS §§ 1111–1172 (3d ed. 2004); RESTATEMENT OF PROPERTY § 406 cmts. (1944).

36. CLT HANDBOOK, *supra* note 1, ch. 9.

II. If CLTs Do Not Need Legislation to Function, Why Bother? CLTs Need Legislation to Thrive.

Legislation can help CLTs do more than function; it can help these organizations thrive.³⁷ Legislation that defines CLTs provides funding for technical assistance and land acquisition, removes legal or regulatory barriers, creates guidelines and standard practices, and codifies uniform tax appraisal methods, all helping to provide the kind of support that CLTs need to grow. Such legislation adds legitimacy, grows public awareness of the model, bolsters the sustainability of CLT organizations, ensures permanent affordability of the homes, increases the scale of CLT programs and projects, provides reassurance for investors and professionals, and encourages greater support for these nonprofits and their permanent affordable home ownership programs. Finally, and importantly, CLT legitimacy can be reassuring to potential homebuyers and existing CLT homeowners.

Legislation is by no means the only tool available to support CLTs. Funding and financing sources made available through channels other than legislation are key, as are public program administration and oversight at all levels of government. CLT success is subject to factors such as the national and local housing market forces, economic forces, and availability of private and philanthropic capital. Staying abreast of developments in these areas is important for CLT practitioners. However, they are beyond the scope of this article.³⁸

37. The West Virginia Revised Code does not allow improvements on land to be classified as real property separate from the land. There is no direct prohibition against CLTs, but there are prohibitions against commercial buildings and mobile homes being separated from the land. W. VA. CODE § 11-5-12 (“Mobile homes situate upon property owned by a person other than owner of mobile home. Mobile homes situated upon property owned by a person other than the owner of the mobile home are classified as personal property whether or not the mobile home is permanently affixed to the real estate.”). Until 2010, the state of Maryland had a law prohibiting resale restrictions in ground leases, but the legislature addressed this issue in the Maryland Affordable Housing Land Trust Act, 2010 Md. Laws chs. 609, 610 (codified at MD. CODE ANN. EST. & TRUSTS § 11-102(b)(13), MD. CODE ANN., REAL PROP. §§ 3-102(a)(2)(vi); 6-101(a); 8-110(a)(4); 8-111.2(a)(4); 14-501 to 14-511 (2010)). Both Texas’s and Wisconsin’s state constitutions contained provisions limiting long-term restrictions on private property. The Texas legislature addressed this directly in 2010 by passing a CLT definition in its Homestead Preservation Act, TEX. LOC. GOV’T CODE ANN. §§ 373A.001–373A.213 (2010); TEX LOC. GOV’T. CODE ANN. § 373B.005 (2012) (amended 2021). In Wisconsin, the constitution contains what is known as the “alienation clause,” which was interpreted at times as creating an obstacle to permanently separating land ownership from ownership of improvements. WIS. CONST. art. I, § 14. That said, Wisconsin is currently home to at least three CLTs, including the Madison Area CLT that has been in operation since 1991. MADISON AREA COMMUNITY LAND TRUST (2020), <https://affordablehome.org/> (last visited Dec. 12, 2022).

38. Grounded Solutions Network’s online library, <https://groundedsolutions.org>, offers free resources on CLT-policy related topics.

CLTs with the capacity to promote and advocate for legislation have done so for many reasons. They include access to government funding and resources, down-payment assistance programs, and homebuyer tax credits; establishing protocols for the clear and uniform application of existing laws to CLTs expanding community awareness and engagement; and underscoring the model's legitimacy for professionals—lenders, realtors, title agents, tax assessors, and others whose engagement is essential to CLT transactions. The results of these efforts have varied.³⁹

The CLT lobbying efforts discussed here are a combination of new and time-tested legislation directed at every level of government—from municipal to state, federal to territorial. This article offers five case studies addressing the following legislative efforts: Part III covers a proposed amendment to the New York City charter to prevent displacement of BIPOC homeowners and gentrification of low-income neighborhoods by securing CLTs the right of first refusal for public property; state code definitions of CLTs to facilitate legal transactions; Parts IV and V cover proposed city and county ordinances and state codes to create CLT-specific tax exemptions and appraisal methods for keeping costs down; Part V also examines legislative efforts at the state level to broaden housing trust funds to include operating costs and capital for CLTs; Part VI addresses suggested changes to federal laws and regulations to increase CLT access to HOME funds; and Part VII involves U.S. territorial efforts to harness the power of the community and leverage CLT land ownership to push for environmental justice.

39. Examples of state laws that promote CLTs include the following: Florida's surplus land law, which requires counties and municipalities to use surplus land in ways that benefit affordable housing. FLA. STAT. § 125.379 (2006) (counties); FLA. STAT. § 166.0451 (municipalities). Florida has eight CLTs to date, plus the Florida CLT Institute. FLORIDA HOUSING COALITION, <https://flhousing.org/community-land-trusts> (last visited Dec. 12, 2022).

The California Tax Code contains a definition of CLTs and requires tax assessors to consider the impact of affordability and resale restrictions when assessing the CLT property "market value." CLT properties that are subject to property taxes may get some relief from this provision. CAL. REV. & TAX. CODE § 402.1(a)(11) (2016) (amended 2019). The Texas Local Government Code § 373B.002 defines a CLT, and the Texas Tax Code § 11.1827 (2021) paves the way for local tax authorities to offer property tax exemptions for CLT land and CLT-owned housing units. Other types of legislative support, such as city and county ordinances streamline administrative processes and offer regulatory incentives like waiving application and impact fees, reducing zoning requirements for things like parking.

III. Access to Land: New York City and a Proposed CLT Right of First Refusal⁴⁰

Like countless cities in the United States, New York City has serious housing affordability issues. One of a number of factors is that for-profit developers win a disproportionate number of bids for city-owned land.⁴¹ Between 2015 and 2018, only one quarter of these sites were awarded to non-profit developers, according to an analysis by the office of City Councilmember Lincoln Restler, District 33, which represents Brooklyn. “For decades the city has given precious public land to for-profit developers who build luxury housing and other projects that displace Black, brown and immigrant New Yorkers,” said Will Spisak, senior program associate at New Economy Project.⁴² CLTs have often been boxed out of acquiring public land in the past. “Larger development firms can put together a proposal much faster, swoop in and increase gentrification in our neighborhoods,” according to City Councilmember Carlina Rivera.⁴³

Mayor Eric Adams’ housing plan is to make New York an affordable place to live.⁴⁴ The question is, how? One of the steps that the city has taken appears to be paying off. In 2019, New York City officials founded the City-wide CLT Initiative with a \$1.5 million annual budget to offer technical assistance and support to the city’s CLTs.⁴⁵ Since then, CLT activity has shifted into a higher gear.

A coalition of twenty plus CLTs and supporting organizations form the New York City Community Land Initiative (NYCCLI—pronounced “nicely”), one of the groups trying to make the goal of permanent affordability in New York City a reality. The group of grassroots, community, faith-based, labor, and citywide organizations works to promote CLTs in the five boroughs.⁴⁶ With all of its members located in a high-density urban area, the coalition’s focus is more on affordable rentals than single family

40. New York City currently has at least fifteen CLTs with a combined number of CLT units at approximately 400. Another 1,000 units were in pre-development in 2021. The New Economy Project coordinates with CLTs across the five boroughs. *Advancing Community Land Trusts*, NEW ECONOMY PROJECT (2014), <https://www.neweconomynyc.org/our-work/campaigns/advancing-clts> (last visited Dec. 12, 2022).

41. Land paid for with tax dollars has been sold to private developers for as little as \$1. David Brand, *Legislation Would Give Nonprofits First Crack at Developing NYC-Owned Land*, CITY LIMITS (Aug. 11, 2022), <https://citylimits.org/2022/08/11/legislation-would-give-nonprofits-first-crack-at-developing-nyc-owned-land>.

42. *Id.*

43. Brown, *supra* note 15.

44. Matthew Haag, Dana Rubinstein & Andy Newman, *Adams Announces Plan to Fix NYC Growing Housing Crises*, N.Y. TIMES (June 14, 2022), <https://www.nytimes.com/2022/06/14/nyregion/eric-adams-housing-crisis-plan.html#:~:text=Mayor%20Eric%20Adams%20on%20Tuesday,entity%20in%20the%20United%20States>.

45. Brown, *supra* note 15.

46. NYC COMMUNITY LAND INITIATIVE (2017), <https://nycli.org> (last visited Dec. 12, 2022).

homes that have been the hallmark of the average CLT, and includes tenant involvement in the CLT governance and a Tenant Opportunity to Purchase program. In some cases, New York City CLTs lease land to limited and zero-equity cooperative models. In outer boroughs, there are more single family CLT homes. Western Queens CLT is working to develop a manufacturing, commercial, and artists' space where the tenants have a voice in how the buildings are managed. In the Bronx, a group of land stewards hope to use the CLT model to acquire an abandoned hospital with historical importance to create a neighborhood center for health, education, and the arts under local ownership and control.⁴⁷ NYCCLI advocates for legislation that promotes and expands CLTs, and that includes proposed state-wide legislation to increase tenant control by giving tenants the right of first refusal. The coalition is also behind efforts to ensure that public lands are used for the benefit of public versus private interests.

Coalition members focused their attention on putting an end to the displacement of low-income and BIPOC residents in the City's five boroughs. They conducted surveys of their neighborhoods to determine where the public land is located. They came up with a strategy to change the way that surplus public land is sold. They proposed to amend the city charter to increase transparency in the sales of public land and prioritize the disposition of public land to CLTs and nonprofits. Different versions of the bill have gone through three sponsors and a few critical changes. The first version, proposed in 2020, would have applied the right of first refusal (RFR) provision for all property sold in New York City. The version floated in 2021 focused exclusively on the right of first refusal for land the City had designated for housing. The version that was introduced in 2022 includes public land designated for commercial, retail, and green space as well as housing.⁴⁸ On August 11, 2022, Councilmember Lincoln Restler, of Brooklyn, introduced a bill to give CLTs and nonprofit developers the RFR to buy land from the City.⁴⁹ If the bill passes into law, New York City will still issue

47. A group called the Young Lords and their allies, including members of the Black Panthers, took over Lincoln Hospital in 1970 to protest cuts to funding and the hospital's ongoing failure to serve the community and established a community rehab clinic. *July 14, 1970: Young Lords Occupy Lincoln Hospital*, ZINN EDUCATION PROJECT (2022), <https://www.zinnedproject.org/news/tdih/young-lords> (last viewed Dec. 14, 2022).

48. This expansion of the bill was in no small part a result of Amazon's 2018 announcement of its plan to establish its headquarters in Queens. See J. David Goodman, *Amazon Pulls Out of Planned New York City Headquarters*, N.Y. TIMES (Feb. 14, 2014), <https://www.nytimes.com/2019/02/14/nyregion/amazon-hq2-queens.html>.

49. The bill was introduced by Brooklyn representative Councilmember Lincoln Restler. The bill's title is "A Local Law to Amend the New York City Charter, in relation to the disposition of real property in the city". File # Int 0637-2022. It was introduced on August 11, 2022, but was still pending as of December 15, 2022.

The bill notes the following:

Section 1. Subdivision b of section 384 of the New York city charter is amended by adding a new paragraph 6 to read as follows:

an RFP when selling, but it could only sell public land to for-profit developers if no nonprofits or CLTs submit a viable RFP.⁵⁰

While the bill has its opponents, it has not faced a widespread campaign to block its passage. Perhaps this possible acceptance is because the bill leaves opportunities for nonprofit and private developers to partner with CLTs that want to hold and steward the land but do not want to get involved in the building planning and construction. Proponents of the bill are hoping for passage by the end of 2022.⁵¹

IV. Enabling Legislation and Consistent Tax Policies: The Guadalupe Neighborhood Development Corporation and the University of Texas Law School

From the start, CLT real estate appraisals posed a significant hurdle for the model in Texas. The misevaluation of CLT property significantly interfered with the homes' permanent affordability.⁵² Owners of resale-restricted homes were being taxed at the market rate. The appraisal formula did not account for affordability provisions attached to the property, including the lease restrictions and the restricted resale price. Appraisals of CLT rental properties also used the wrong capitalization rate, resulting in these buildings being taxed at a higher rate than other rent-restricted properties in the state.⁵³

6. Notwithstanding the provisions of paragraph one of this subdivision, the mayor shall not, when disposing of real property of the city to be developed for the purpose of providing affordable housing, or for any other public use or purpose, or for the promotion of public utility, comfort, health, enjoyment or adornment, award such property to a for-profit developer unless no not-for-profit developer or community land trust applied for and met any applicable qualifications for such property, provided that this paragraph shall not apply to real property sold pursuant to a state law providing the mayor or the commissioner of housing preservation and development with control over such sale.

§2. This local law takes effect 120 days after it becomes law."

N.Y. City Council, Disposition of Real Property in the City, (Aug. 11, 2022), [https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5755066&GUID=17915DC0-F3D3-40C2-8121-2EFF5371F550&Options=ID|Text|&Search=\[hereinafter Restler Bill\]](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5755066&GUID=17915DC0-F3D3-40C2-8121-2EFF5371F550&Options=ID|Text|&Search=[hereinafter Restler Bill]).

50. The first of these bills, introduced by Council Member Carlina Rivera in April 2022, would have given CLTs and nonprofit developers the right of first refusal on all sales in the New York metropolitan area, including privately owned properties. The second was introduced by former Council Member Brad Lander. Neither was not adopted by the council. Restler's bill is the third of three such bills floated in the past year. See Haag, Rubenstein & Newman, *supra* note 44.

51. Restler Bill, *supra* note 49.

52. This problem is not unique to Texas. Confusion surrounds these questions at state and local taxing authorities throughout the United States.

53. KELLY WEISS, CITY OF AUSTIN, NEIGHBORHOOD HOUSING & COMMUNITY DEVELOPMENT—AUSTIN HOUSING FINANCE CORP., THE COMMUNITY LAND TRUST REPORT: CREATING PERMANENT AFFORDABLE HOME OWNERSHIP OPPORTUNITIES IN AUSTIN, TEXAS (RESOLUTION NO. 20050526-021) (2005). <https://docs.google.com/viewerng>

Two early proponents of the CLT model in that state, Heather Way, Clinical Law Professor and Co-Director of the Entrepreneurship and Community Development Clinic (ECDC) at the University of Texas School of Law, and Mark Rogers, Executive Director of Guadalupe Neighborhood Development Corporation (GNDC), led the policy work to correct the appraisal issue over multiple legislative sessions.⁵⁴

The year 2005 marked a banner year for CLTs in Texas. The City of Austin passed a resolution that spring, directing the city manager to research the feasibility of CLTs in Texas. Funding and other resources were provided by the City of Austin, the Department of Housing and Urban Development (HUD), and the Institute for Community Economics.⁵⁵ A report from experts from Burlington and Associates concluded that CLTs were feasible under existing state laws.⁵⁶ Texas property and tax laws permitted the separation of land from improvements with separately executed and recorded deeds, with separate tax parcel numbers for the land and improvements.⁵⁷

The model got its first legislative boost from the Texas legislature when State Representative Eddie Rodriguez and others sponsored a bill to promote permanently affordable homeownership.⁵⁸ Known as the Homestead Preservation Act, the bill that passed included a provision allowing municipalities to create one or more homestead land trusts within their jurisdictions, the requirements of which mirrored the requirements for CLTs. The Act also amended Texas's existing homestead exemption to address economic displacement across the state. General creditors other than mortgage lenders would no longer be able to foreclose on the home of a person in default. Further, the Act allowed cities to use tax increment financing (TIF) to fund neighborhood revitalization in gentrifying areas.

Encouraged by the report and the new legislation, Austin attempted to use TIF funds created by the Act to place twenty-five percent of the new homes in its 700 acres airport redevelopment project into the newly formed Homestead Trust, a CLT.⁵⁹ The ambitious project did not succeed, but it paved the way for the first CLT homes in the state

GNDC in Austin decided to incorporate home ownership into its housing programs using the CLT model. The organization sought assistance from the faculty and students with the ECDC in 2009 to add CLT homes to

[/viewer?url=https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-weiss.pdf](https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-weiss.pdf)

54. Telephone Interview with Mark Rogers, Exec. Dir., Guadalupe Neighborhood Development Corp. (Aug. 24, 2022).

55. WEISS, *supra* note 53. A group of CLT experts from Burlington and Associates were hired to write a report on what was needed.

56. *Id.* The report concluded that CLTs were feasible under existing state laws.

57. See TEX. LOC. GOV'T CODE ANN. § 394.904; TEX. TAX CODE §§ 11.11, 11.42(b), 11.43(a); see also WEISS, *supra* note 53, at 21–22.

58. Tex. H.B. 525 (codified at TEX. LOC. GOV'T CODE § 373A (as amended 2005)).

59. Interview with Mark Rogers, *supra* note 54.

their existing housing programs. What started as a request for legal documents became an attorney-client partnership that has contributed greatly to the passage of CLT-supportive legislation at the local and state level in Texas.⁶⁰

However, appraisals remained problematic. GNDC was relentless in its pursuit of a uniform statewide policy on taxation of CLT properties that would clarify appraisal methods. With their statewide allies, the organization proposed amendments to the 2011 CLT definition and corresponding tax provision.⁶¹ Clinical Law Professor Eliza Platts-Mills and her students employed their mediation skills to negotiate with local tax authorities on resolving the tax issues. They assisted their client GNDC in meetings with tax authorities starting in 2012 to explain the limited resale value of the homes. Despite reaching various understandings and agreements with tax districts in and around Austin, local assessors in Austin continued to misclassify and miscalculate, and GNDC would file suit to have the errors corrected. This cycle went on for years.⁶²

In addition to working with tax authorities at the local level, CLT advocates continued to fight for clarification of the tax code at the state level.⁶³ Most recently, supporters lobbied for changes to the statutory definition of CLTs that would increase the types of nonprofit entities that could qualify as CLTs and established clear guidelines for appraisals. For CLT homes, the chief appraiser would have to account for the uses and limitations applicable to the property, including the lease restrictions and the restricted resale price. For CLT rental properties, the chief appraiser would be required to use the same capitalization rate that is used for other rent-restricted properties.⁶⁴

Texas Senate Bill 113 passed on June 18, 2021. According to one source, Texas now has one of the clearest tax codes in the country, at least in the CLT context.

V. Access to Housing Funds and Equitable CLT Property Taxation: Minnesota's HOM Coalition

Since the 1990s, CLTs in Minnesota have worked steadily to address immediate problems while simultaneously planning ahead. They formed a

60. WEISS, *supra* note 53. Then, Clinical Professor Eliza Platts-Mills and her students assisted the new CLT with their documents and a primer on CLTs for the City of Austin. Later, they made CLT legal resources available on the law school's website. These model documents are still up and free to all. See *Community Land Trust Toolkit*, UNIV. OF TEXAS AT AUSTIN SCHOOL OF LAW (2022), <https://law.utexas.edu/clinics/2018/07/01/community-land-trust-toolkit> (last accessed Dec. 15, 2022).

61. TEX. LOC. GOV'T CODE ANN. tit. 12 Planning and Development, subtit. A, Municipal Planning and Development, Chap. 373b Community Land Trusts (2012).

62. Interview with Mark Rogers, *supra* note 54.

63. S.B.113 Leg. 87th Sess. (2021–2022); see TEX. TAX CODE § 11.1827 amendments (June 7, 2021), https://texas.public.law/statutes/tex_tax_code_section_11.1827.

64. *Id.*

statewide CLT coalition in 2005 as the Minnesota Community Land Trust Coalition (MNCLTC). The MNCLTC focused its early efforts on real estate industry partner outreach/education, peer learning, and CLT-focused advocacy work.⁶⁵ By 2012, the state had codified a definition of a CLT.⁶⁶ Around the same time, advocates for affordable housing began building a grassroots coalition to coordinate their efforts and introduce statewide legislation for the benefit of all types of affordable housing. The MNCLTC was active in this affordable housing advocacy, but affordable homeownership was often left off the table in the final hours of legislative activities. In response, MNCLTC expanded its focus from CLTs to a broader group of affordable homeownership providers statewide. The MNCLTC CLTs worked to broaden their network, operating on the assumption that all of the affordable housing organizations in the state would be more successful if they combined their efforts and resources than if they remained siloed.⁶⁷ This broader affordable homeownership group, which began in 2020, is known as Home Opportunity Minnesota (HOM).⁶⁸ Due to the growing support for CLTs in Minnesota and across the United States, other state housing advocates realized that they needed to support permanent affordability. HOM took a major step forward the following year when it imposed member fees to hire a dedicated lobbyist and required weekly attendance at meetings. This effort has allowed members to get to know, understand, and trust each other better. The HOM coalition has already successfully advocated in the legislature for state housing funds to be allocated to permanently affordable homeownership.⁶⁹

65. Telephone interview with Jeff Washburn, Exec. Dir. City of Lakes CLT, President of the HOM Coalition (Oct. 6, 2022).

66. For the full text in the Minnesota statutes, see Minn. Legis. Office of the Revisor of Statutes, 2022 Minn. Statutes, § 462A.30 (2022), <https://www.revisor.mn.gov/statutes/cite/462A.30>.

67. CLT advocates who have played a significant role in this work are Jeff Corey, Executive Director for One Roof Community Housing (formerly Northern Communities Land Trust) since 1998, and Jeff Washburn, the Director of the City of Lakes Community Land Trust since November of 2002.

68. HOME OPPORTUNITY MINNESOTA (HOM), <https://nwhomepartners.org/home-ownership-opportunity-minneapolis-hom-down-payment-assistance>.

69. In the first two years of its existence, HOM lobbying efforts have resulted in the expansion of housing infrastructure bills to all homeowners, \$3.25M for Workforce Homeowner Fund, \$18.3M housing infrastructure bills for single-family homeownership, and \$15M in housing infrastructure bills and \$1.75M in appropriation for Manufactured Housing. HOM successfully lobbied for the passage of updated CLT legislation in 2021. See MINN STAT. § 462A.30 T (2021). DEFINITIONS defines First Option to Purchase, Ground Lease, Leasehold Interest, Limited Equity Formula, Limited Equity Price, Community land trust, and Persons and families of low and moderate income. *Id.* § 462A.31 (2021). Community Land Trusts established CLT purposes, powers, restrictions, mortgages, rights of heirs, city land trusts and the recording of the ground lease.

The racial gap in homeownership has been a focus for CLTs since the movement's inception in Minnesota. Despite numerous studies documenting the disparities and stated goals to address the issue, the racial homeownership gap continues to worsen in Minnesota. After George Floyd died in police custody in 2019, Minnesotans began to better understand the impacts of racism, resulting in a spotlight on homeownership disparities on a much bigger level.⁷⁰ They challenged legislative leaders to support programs with a proven record of closing the gap between white and BIPOC homeownership numbers. Though the members of HOM have different geographies, they share this in common—they all consistently serve people of color at higher rates than the market does. They were able to demonstrate to politicians that the range of CLTs serving households of color is between two to six times higher than local BIPOC homeownership rates. As an example, in Minneapolis, twenty-eight percent of BIPOC families own their home, while fifty-six percent of CLT homes in the city are owned by BIPOC families.⁷¹

A pressing issue being addressed by HOM in 2022 is codifying equitable CLT taxation. Starting in 2020, the coalition has backed legislation to change the tax classification of CLT price restricted homes from the fair market value to what is referred to informally as "4D status."⁷² If reclassified, CLT homes and land would be taxed at seventy-five percent of the current market rate, providing a significant savings to existing homeowners struggling to pay taxes due to the rising cost of real estate and preventing the disproportionate displacement of families of color.⁷³ The most recent bill was approved in the House but did not make it out of the Senate.⁷⁴

70. Washburn interview, *supra* note 65.

71. *Id.*

72. "4D status" refers to a tax classification under the Minnesota Tax Code section 273.128(3). The 4D classification only applies to qualifying low-income rental housing certified to the assessor by the Housing Finance Agency, which allows a property to be taxed at seventy-five percent of the market rate value. Currently, this classification does not apply to affordable home ownership.

73. The City of Minneapolis reduced property taxes on shared equity housing in 2021. The Minneapolis City Assessor studied the impact of those lower rates on the City of Lakes CLT homeowners and found that over seventy percent of the homeowners saw a thirty percent plus reduction in their 2022 property taxes. *Id.*

74. Sec. 6. Minnesota Statutes 2021 Supplement, section 273.11, subdivision 12, is amended

6.12 to read:

6.13 Subd. 12. Community land trusts. (a) A community land trust, as defined under chapter

6.14 462A, is(i) a community-based nonprofit corporation organized under chapter 317A, which

6.15 qualifies for tax exempt status under 501(c)(3), or (ii) a "city" as defined in section 462C.02,

6.16 subdivision 6, which has received funding from the Minnesota housing finance agency for

Currently, 4D status only applies to rentals. On a parallel track, affordable rental advocates are pushing to bring the 4D tax rate down from seventy-five percent to twenty-five percent, a change that would have significant impact on CLT homeowners if the tax status reclassification bill passes. The HOM coalition plans to resume lobbying efforts for the reclassification and hope to see it passed in the upcoming legislative session.

VI. Removing Regulatory Barriers: Grounded Solutions Network and Restrictions on HOME Funds

Support for CLTs at the federal level has been scarce. The two pieces of CLT-specific federal legislation are the 1992 Cranston-Gonzales Act's definition of a CLT⁷⁵ and the 2016 Appropriations bill secured the right of first

6.17 purposes of the community land trust program. The Minnesota Housing Finance Agency

6.18 shall set the criteria for community land trusts.

6.19 (b) Before the community land trust can rent or sell a unit to an applicant, the community

6.20 land trust shall verify to the satisfaction of the administering agency or the city that the

6.21 family income of each person or family applying for a unit in the community land trust

6.22 building is within the income criteria provided in section 462A.30, subdivision 9. The

6.23 administering agency or the city shall verify to the satisfaction of the county assessor that

6.24 the occupant meets the income criteria under section 462A.30, subdivision 9. The property

6.25 tax benefits under paragraph (c) shall be granted only to property owned or rented by persons

6.26 or families within the qualifying income limits. The family income criteria and verification

6.27 is only necessary at the time of initial occupancy in the property.

6.28 (c) A unit which is owned by the occupant and used as a homestead by the occupant

6.29 qualifies for homestead treatment as class 1a under section 273.13, subdivision 22, or class

6.30 4d if the requirements of section 273.13, subdivision 25, paragraph (e), clause (2), are met.

6.31 A unit which is rented by the occupant and used as a homestead by the occupant shall be

6.32 class 4a or 4b property, under section 273.13, subdivision 25, whichever is applicable. Any

6.33 remaining portion of the property not used for residential purposes shall be classified by

6.34 the assessor in the appropriate class based upon the use of that portion of the property owned.

75. The Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. § 12773 (as amended in 1992).

refusal under the HOME language.⁷⁶ Federal recognition of CLTs has also been elusive at the agency level. CLTs qualify for some U.S. Department of Housing and Urban Development (HUD) funding or other forms of assistance in their capacity as nonprofits generally, but not as CLTs specifically. Even when CLTs are eligible, they often do not apply for, do not receive it, or do not qualify for reasons that are unconnected to being a CLT, such as lack of capacity.⁷⁷ Possible explanations for the paucity of funding at the federal level include the fact that real estate law is primarily the purview of the states, rendering any national enabling legislation symbolic; another factor could be the limited types of subsidy dollars available to shared equity homeownership programs.⁷⁸ There is also the lack of familiarity with shared equity models in general and CLTs in particular. Policy makers may assume low-income people lack not only the means to purchase a home, but the stability and knowledge needed to succeed at homeownership. The federal government has supported homeownership programs through mortgage financing products and limited down payment assistance programs, where the subsidy goes directly to the homebuyer and does not stay with the home.⁷⁹ National affordable housing programs have historically been aimed primarily at rental and emergency housing solutions. Homeownership has been largely overlooked.

CLT advocates have been chipping away at this problem for a long time. Beginning in the early 1980s, the Institute for Community Economics (ICE) served a central role in promoting the CLT model at the national level.⁸⁰ When ICE convened this country's first CLT conference in Atlanta in 1987, U.S. Representative John Lewis gave the keynote address. Beginning in 1994, ICE's efforts at advocating for national policy in support of CLTs resulted in, among other things, being awarded a series of major grants from HUD to offer technical assistance to its member CLTs.⁸¹ ICE dissolved in 2007 and was replaced by the National Community Land Trust Network, which served for several years as the umbrella organization for CLTs and took on lobbying efforts at the national level. That organization merged with Cornerstone Partnership in 2016 to form Grounded Solutions Network (GSN), a membership organization that represents shared equity homeownership nonprofits, local governments, allied organizations, and

76. 42 U.S.C. § 12745(b)(3)(B).

77. Telephone Interview with Emily Thaden, Vice President of National Strategy at Grounded Solutions Network (Sept. 6, 2022).

78. The two main sources are HOME funds and Community Development Block Grants (CDBG).

79. Interview with Emily Thaden, *supra* note 77.

80. CLT Timeline, *supra* note 4.

81. *Id.*

individuals committed to housing with lasting affordability.⁸² GSN is the umbrella organization that handles CLT advocacy at the federal level.⁸³

National advocates have achieved some important gains in recent years. One of the most significant of these was collaborating with Fannie Mae and Freddie Mac to create product offerings and improve their offerings for borrowers of ground leased homes and deed-restricted shared equity homes, increasing access to conventional mortgages.

GSN's legislative strategies are many-pronged and complex. Certain aspects of HUD's rules and regulations make it difficult for CLTs to access HOME funding. A key issue has been that HUD is applying the CLT definition introduced in 1992 across the HOME program; however, the definition narrowly only applies to the requirements for CLTs to be able to access Community Housing Development Organizations (CHDO) resources, including education and organizational support. In these instances, CLTs must meet the CLT definition and the CHDO definition to access these specific resources. "This confusion is stymying CLT involvement in HOME because HUD is applying the CLT definition specific to technical assistance to all aspects of the HOME Program, thus treating CLTs differently than it does other nonprofits."⁸⁴ Regardless of whether a CLT meets the CHD definition, CLTs should be eligible to use non-CHDO HOME funds to provide permanently affordable homes.

As noted, for CLTs that are also interested in access to CHDO-related resources, they must meet the CLT definition and the CHDO definition. Under the 2013 HOME program final rule CHDO requirements for board composition created a barrier for many CLTs, as the CHDO definition for lower income board representation could misalign with the tripartite board requirements under the CLT definition.⁸⁵ The rule specifies that CHDO

82. The majority of the members are CLTs and other nonprofits with shared equity housing programs.

83. The GSN website describes its policy advocacy as follows: "Grounded Solutions Network keeps a watchful eye on public policies impacting affordable housing and community development. We conduct research and share our analysis with our members, allies, clients, and governments. We coordinate private and public partnerships, build coalitions, and lead strategic outreach." *Policy Advocacy*, GROUNDED SOLUTIONS NETWORK (2022), <https://groundedsolutions.org/how-we-do-it/policy-advocacy>. Most recently, GSN lobbied for federal CLT legislation in the form of HR 816 and 4497 during the 117th Congress (2021–2022).

84. NCSHA-Led Sign-on Letter to HUD on Improvements to HOME Guidance, NCSHA (Aug. 25, 2022), <https://www.ncsha.org/resource/ncsha-led-sign-on-letter-to-hud-on-improvements-to-home-guidance>. In a recent determination from the Office of Affordable Housing Programs (OAHP), OAHP recommended to a HUD TA provider that "a CLT must meet not only the CLT definition for technical assistance, but also the CHDO definition, and that CLTs are only eligible for CHDO set-aside dollars and not general HOME dollars." 42 U.S.C. § 12745(b)(3)(B).

85. 2013 HOME Final Rule, 24 C.F.R. pt. 92 (2013), <https://www.hudexchange.info/programs/home/home-final-rule/#:~:text=Overview%20of%20the%202013%20>

boards must have at least one-third low-income representatives.⁸⁶ The statutory definition of CLT boards requires one-third of the representatives be lessees,⁸⁷ who must be low-income at the time that they purchase a home and become lessees, but the CLT model allows for and even encourages economic mobility of their homeowners. An increasing number of CLTs are getting cut off from this crucial source of funds due to HUD's requirement that both the CLT and CHDO definitions must be met.⁸⁸

Another issue that stems from the 1992 CLT definition is the requirement for corporate community membership,⁸⁹ as many start-up CLTs do not have a community membership program until they are further along in their organizational development.

GSN's goal is to broaden the definition of CLTs in federal HOME Investment Partnerships (HOME) legislation, to ensure that they are generally able to access HOME funds and ensure that CLTs can meet CHDO requirements so they can access CHDO-related HOME resources. The 2013 HOME rule resulted in many CHDOs (and CLTs) with limited capacity from being able to use HOME funds, which disproportionately impacted nonprofits serving communities of color and rural communities.⁹⁰ GSN's current strategy is to advocate for statutory as well as regulatory changes.

When President Biden issued his Housing Supply Action Plan, he signaled an opening for rule changes in HOME, changes that could potentially address barriers for CLTs to access to HOME funds.⁹¹ GSN worked with its fellow HOME Coalition members to draft a consensus set of recommendations for the HUD Secretary in anticipation of HUD opening its rulemaking process.⁹²

One of the recommendations that the group advocated for is increased CLT access to HOME dollars under the heading, "Inappropriate Application of the Community Land Trust Definition, 42 USC Section 12773."⁹³ If the changes are going to be made at the agency level, GSN plans on engaging in member outreach and education once HUD requests public com-

HOME%20Final%20Rule&text=It%20provides%20funding%20to%20State,and%20tenant%2Dbased%20rental%20assistance.

86. *Id.*

87. 42 U.S.C. § 12773(f) (as amended in 1992).

88. See Interview with Emily Thaden, *supra* note 77.

89. *Id.*

90. Letter from the HOME Coalition (National Alliance of Community and Economic Development Associations, National Low Income Housing Coalition, Grounded Solutions Network, and Habitat for Humanity International) to Marcia Fudge, Secretary of U.S. Hous. & Urb. Dev't (Sept. 2, 2022), https://naceda.memberclicks.net/assets/HOME%20Recommendations_%20CHDOs.pdf.

91. Press Release, White House, New Actions to Ease the Burden of Housing Costs (May 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs>.

92. Interview with Emily Thaden, *supra* note 77.

93. Letter from HOME Coalition, *supra* note 90.

ment to address the misapplication of the CLT definition and ensure that CLTs can broadly use HOME funds. GSN will also be advocating for a series of other changes such as broadening CHDO eligibility, ensuring that resale formulas used by CLTs are permitted under HOME, permit repair/replacement reserves, and buyer-initiated programs. GSN efforts will focus on the specific ask that it made in its letter: the rules should distinguish between CLTs and CHDOs for the purposes of HOME fund eligibility.

If a HOME reauthorization bill is introduced, GSN will direct efforts at mobilizing its allies on Capitol Hill to propose statutory language addressing the shortcomings in the HOME program.

VII. Land Justice: San Juan, Puerto Rico, and El Proyecto ENLACE del Caño Martín Peña⁹⁴

In the early 2000s, eight informal communities situated on public land along a canal in the center of San Juan, Puerto Rico, faced imminent displacement.⁹⁵ A massive redevelopment plan was in the works. The canal is located next to the financial district in the heart of Puerto Rico's capital city of San Juan, and gentrification seemed inevitable. The neighborhoods in this area were developed organically, or haphazardly, depending on point of view. The growth happened over decades without any planning. Many of the homeowners lack title to their homes and the land underneath, which impedes their access to building permits and makes their tenure less secure.

A coalition of activists, academics, and nonprofits convened over 700 public meetings in two years. In 2002, they formed Enlace, an umbrella organization, with help from the clinic La Clínica de Asistencia Legal at the University of Puerto Rico School of Law.⁹⁶ The original goal of Enlace was to transfer ownership of land along the canal to the communities and legal title to the homes to established residents. Big money development

94. CANO 3.7, <http://martinpena.org/nuevo-proyecto> (last visited Dec. 18, 2022).

95. ENLACE is the Corporación del Proyecto ENLACE del Caño Martín Peña, <https://urbanwaterslearningnetwork.org/member-profile/la-corporacion-del-proyecto-enlace-del-cano-martin-pena>. ENLACE is a public corporation created under the Commonwealth of Puerto Rico's Law 489 of September 24, 2004, as amended, to coordinate and implement public policies and projects regarding the restoration of the Caño Martín Peña (Caño) and the promotion of the urban, social, and economic equitable and comprehensive development of the adjacent eight communities; see also *ENLACE del Caño Martín Peña: Restoring an Ecosystem and Building Resilient Communities in Puerto Rico*, URB. WATERS LEARNING NETWORK (Dec. 22, 2017), <https://urbanwaterslearningnetwork.org/resources/proyecto-enlace-del-cano-martin-pena-restoring-ecosystem-building-resilient-communities-puerto-rico>.

96. Telephone Interview with Maria Hernandez-Torrales, attorney and adjunct professor at the University of Puerto Rico School of Law (July 12, 2021). She has been involved with Enlace for the past several years and has played a key role in their successful campaign to legalize the relationship between the people living on the canal and the property where their homes are located. *Clinica*, ESCUELA DE DERECHO, <https://derecho.uprrp.edu/facultad/clinica-3>.

interests opposed the transfer because it would mean loss of business opportunities. The city government opposed it because these communities so close to the financial district were low-income and chaotic.⁹⁷

The project combined lobbying with social and environmental activism. Allies include non-profits El G-8, Inc. and Fideicomiso (community land trust) de la Tierra, the University of Puerto Rico, foundations, businesses, and governmental organizations. The group lobbied the Puerto Rico legislature, and, to the great surprise of the bill's supporters, it passed. Puerto Rico Law 489 established the Comprehensive Development and Land Uses Plan for the Caño Martín Peña Special Planning District, conveying two hundred acres to the newly formed CLT in 2004.⁹⁸ Less surprising, five years later, the legislature passed a law taking back the land it had conveyed. The CLT filed a lawsuit and spent the next several years in and out of court.⁹⁹

In 2013 the legislature reversed itself again. Puerto Rico created a Special Planning District for Caño Martín Peña to transfer ownership of the 3.7 miles of land along the Caño to the Enlace and transfer legal ownership of the homes to the residents. The actual transfer of titles began.¹⁰⁰

With the transfers of land and title becoming a reality, Enlace turned its attention to another urgent problem. The canal is the site of wastewater disposal for thousands of homes, creating health risks.¹⁰¹ Rising waters threaten the 26,000 residents in the eight communities and impact marine life and the biodiversity of the area.¹⁰²

The coalition lobbied at all levels of government for funds to undertake a cleanup. On July 26, 2022, the U.S. Army Corp of Engineers Jacksonville District signed the Project Partnership and Memorandum of Agreement to start construction on a massive cleanup. The Caño Martín Peña Ecosystem Restoration Project.¹⁰³ The cleanup will include dredging 2.2 miles of the canal, planting 35 acres of mangroves, implementing shoreline

97. *By the People, For the People: Social and Environmental Revitalisation of the Caño Martín Peña, Puerto Rico*, URBANET (Aug. 18, 2018), <https://www.urbanet.info/cano-martin-pena>.

98. *ENLACE del Caño Martín Peña*, *supra* note 95.

99. *ON COMMON GROUND* 189–210 (John Emmeus Davis, Line Algoed & Maria Hernandez-Torres eds., 2020).

100. Ground leases are not an option for CLTs in Puerto Rico. The title to a home is transferred in the form of surface rights, and the CLT holds title to the land underneath. Under the territorial law, home title transfers can only be done by an attorney, not title agents or realtors. Telephone Interview with Maria Hernandez-Torres, *supra* note 96.

101. *Nueva Campana*, CANO 3.7, <http://cano3punto7.org> (last visited Dec. 15, 2022).

102. Mark Rankin & Luis Deya, *USCAE Signs Project Partnership Agreement for Cano Martín Peña Ecosystem Restoration Project in San Juan, Puerto Rico*, U.S. ARMY CORPS OF ENG'RS (July 26, 2022), <https://www.saj.usace.army.mil/Media/News-Stories/Article/3106132/usace-signs-project-partnership-agreement-for-cao-martn-pea-ecosystem-restorati>.

103. *Id.* (authorized by § 5127 of the Water Resources Development Act (WRDA) of 2007 (Pub. L. 110-114), as amended by § 402(e) of WRDA of 2020, (P.L. 116-260)).

stabilization and erosion control measures, and reestablishing the tidal connection between the canal and the San Juan Bay.¹⁰⁴

Conclusion

The research demonstrates that no template or sample legislation works for all CLTs across the country. However, various themes run through the legislative strategies covered here. Having CLT-enabling legislation at the state level is helpful, even in states with well-established CLTs, as it ensures consistency, predictability, and legitimacy. The language of existing statutes can be easily adapted to accommodate differences in the state laws. Legislation at any level of government that facilitates the transfer or sale of public land to CLTs is another strategy that can have a huge positive impact on CLTs. A corollary to this plan is the type of policies that include permanent affordability requirements for development of public land or offer incentives to private developers to build permanently affordable homes.¹⁰⁵ Lobbying for uniform appraisal and tax policies is an effective way to support CLT homeowners, and the language of existing statutes can also be adapted to meet the rules and regulations of diverse jurisdictions. Legislation that broadens access to funding and other resources to include CLTs can improve long-term sustainability of these organizations. The examples in this article can serve as a starting point in places where these types of legislation are lacking.¹⁰⁶

For CLTs like the Guadalupe Neighborhood Development Corporation in Austin and the Charm City CLTs in Maryland, enlisting the aid of law school clinics greatly increased their organizational capacity for advocacy. Students are helpful in thinking creatively and putting time into big scope projects. Clinics are part of most law schools and are often underutilized.

One theme that has emerged repeatedly from the research for this article is the vital importance of community involvement at every step of the process. Watching the cost of homes soar in the aftermath of the COVID epidemic, the lack of affordable housing, never mind home ownership, can feel intractable at times. The growing awareness and popularity of shared equity housing in the United States, especially CLTs, are contributing to a desire to bring CLTs to scale on a national level. Working with communities in the planning stages and continuing to include residents in the organizational governance of CLTs remain essential as we attempt to address the crisis with CLT projects that are increasingly large in scale and scope. Don't forget the C in CLT.

104. *Id.* Funding for the project is to be shared between the federal government, the Enlace, and the Puerto Rico Department of Natural and Environmental Resources. The appropriated federal funds were part of the Infrastructure Investment and Jobs Act 2022.

105. A Local Law to Amend the New York City Charter, in relation to the disposition of real property in the city," File # Int 0637-2022. It was introduced on August 11, 2022, but was still pending as of December 15, 2022.

106. Andrew Decker, *Community Land Trusts and State Legislation: A Model Act to Enable This Affordable Housing Tool*, 26 J. AFFORDABLE HOUS. & CMTY DEV. L. 489 (2018); John Emmeus Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 UNIV. S.F. L. REV. 1 (2017).

