

# ***Starting a Community Land Trust***

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ORGANIZATIONAL AND OPERATIONAL CHOICES

## **The Diverse World of Community Land Trusts**

*The community land trust (CLT) is a model of great versatility, leading to wide variation in the ways in which the CLT is structured and applied. The key features of the “classic” CLT are described in the present chapter, along with the model’s most common variations.*

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This is one chapter of an introductory manual, *Starting a Community Land Trust: Organizational and Operational Choices*, prepared by John Emmeus Davis, a Partner in Burlington Associates. The full manual is available on-line at the ***Burlington Associates CLT Resource Center***: [www.burlingtonassociates.com](http://www.burlingtonassociates.com).

## **VARIATIONS ON A THEME OF “CLT CLASSIC”**

The community land trust combines a new approach to the *ownership* of land, housing, and other real estate with a new approach to the *organization* of the nonprofit steward of this property. The basic features of the CLT model were outlined in *The Community Land Trust: a Guide to a New Model for Land Tenure in America*, published by the International Independence Institute in 1972. Ten years later, the Institute for Community Economics (ICE), successor to the International Independence Institute, refined and extended the CLT model in another publication, the *Community Land Trust Handbook*, in which a new emphasis was placed on the CLT’s potential for producing and preserving affordable housing and for developing lower-income communities without displacing lower-income people. In 1992, ICE’s refinement of the CLT model was enshrined in federal law in a definition approved by Congress (see Appendix A). Although there is much variation among the 200 CLTs already in existence or under development in the United States, there are *ten* key features that are found in most of them. These features, defining and distinguishing what may be called the “classic” CLT, are described below. Described as well are the most common variations occurring in each of these features.

### **Nonprofit, Tax-exempt Corporation**

**CLT Classic:** A community land trust is an independent, not-for-profit corporation that is legally chartered in the state in which it is located. Most CLTs target their activities and resources toward charitable activities like providing housing for low-income people, combating community deterioration, and lessening the burdens of government. Most CLTs, accordingly, seek and obtain a 501(c)(3) designation from the IRS.

**CLT Variations:** Although CLTs are usually created “from scratch,” as newly formed, 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. Sometimes, when a new CLT is established within the corporate shell of a pre-existing nonprofit, the CLT becomes a permanent part of the nonprofit’s on-going operations. Alternatively, this may be a temporary, transitional arrangement, where the CLT is spun off as a separate corporation when it has the capacity and constituency to thrive by itself.

Nearly all CLTs are chartered as a nonprofit corporation or housed within a nonprofit corporation. Most have a 501(c)(3) tax exemption from the IRS. In a few cases, however, a local government or municipal corporation (like a public housing authority) has developed and managed resale-restricted, owner-occupied housing on leased land, administering a program that resembles a CLT. Not every CLT has secured a 501(c)(3) designation, moreover, either because they have chosen not to serve a population that is “poor, distressed, or underprivileged” or because the IRS

has determined that the applicant fails to meet the organizational and operational tests for receiving 501(c)(3) status.<sup>1</sup>

## Dual Ownership

**CLT Classic:** A nonprofit corporation (the CLT) acquires multiple parcels of land throughout a targeted geographic area with the intention of retaining ownership of these parcels forever. Any building that is already located on the land or that is later constructed on the land is sold to another party. The building's buyer may be an individual homeowner, a cooperative housing corporation, a nonprofit organization or limited partnership developing rental housing, or any other nonprofit, governmental, or for-profit entity.

**CLT Variations:** Although dual ownership 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 dealing with multi-unit rentals, whether residential or commercial, retain ownership not only of the underlying land but of the buildings as well. Some CLTs, when accepting limited-equity condominiums into their portfolios, have not owned the underlying land. They have retained ownership only of a durable right to repurchase these condominiums for an affordable, formula-determined price when their current owners someday decide to sell.

## Leased Land

**CLT Classic:** Although CLTs intend never to resell their land, they provide for the exclusive *use* of their land by the owners of any buildings located thereon. Parcels of land are conveyed to individual homeowners (or to the owners of other types of residential or commercial structures) through inheritable ground leases that typically run for 99 years. This two-party contract between the landowner (the CLT) and a building's owner protects the latter's interests in security, privacy, legacy, and equity, while enforcing the CLT's interests in preserving the appropriate use, structural integrity, and continuing affordability of any buildings located upon its land.

**CLT Variations:** Every CLT uses a long-term ground lease for the conveyance of land. Most of these leases are based on the "model CLT ground lease" developed and refined by ICE over the past 30 years. The exact terms and conditions contained in these two-party contracts, however, can vary greatly from one CLT to another, especially with regard to restrictions on using, subletting, improving, and reselling the buildings that are located on the CLT's land.<sup>2</sup> Condominiums present a special

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<sup>1</sup> See "Tax-Exempt Status for Community Land Trusts," Chapter Six in the *Community Land Trust Legal Manual* (Springfield, MA: Institute for Community Economics, 2002).

<sup>2</sup> See "Design: Contractual Controls over Use and Resale," Chapter Three in John Emmeus Davis, *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-occupied Housing*. (Montclair, NJ: National Housing Institute, 2006).

case, however, where ground leasing is not always possible. Although some condominiums are located on land that is leased from a CLT, there are many cases where a CLT has acquired title to a portion of the condominiums in a large, multi-unit project for which the CLT does not own the underlying land. This has happened most frequently when a CLT has been the beneficiary of a municipality's inclusionary housing program and been assigned long-term responsibility for monitoring and enforcing durable controls over the occupancy, eligibility, and affordability of these inclusionary units required by the municipality.<sup>3</sup>

## Perpetual Affordability

**CLT Classic:** The CLT retains an option to repurchase any residential (or commercial) structures located upon its land, whenever the owners of these buildings decide to sell. The resale price is set by a formula contained in the ground lease that is designed to give present homeowners a fair return on their investment, while giving future homebuyers fair access to housing at an affordable price. By design and by intent, the CLT is committed to preserving the affordability of housing (and other structures) – one owner after another, one generation after another, in perpetuity.

**CLT Variations:** While perpetual affordability is a commitment of every CLT, the formula that defines and enforces affordability varies greatly from one CLT to another. This is due, in part, to the different methods that CLTs can adopt in calculating the resale price of housing that is located upon the CLT's land. Different formulas may also result from the different goals that particular CLTs are trying to achieve or the different populations they are trying to serve. Furthermore, while the vast majority of CLTs adopt a single resale formula, covering all types and tenures of housing within their portfolio – and covering every neighborhood in which they work – a few CLTs have begun to fine-tune their resale formulas to allow some variation among different portions of their housing stock (distinguishing, for example, among detached, single-family houses, condominiums, and cooperatives). A few others have tailored their resale formulas to account for varying conditions within hot and cold sub-markets of their regional service area.

## Perpetual Responsibility

**CLT Classic:** The CLT does not disappear once a building is sold to a homeowner, a co-op, or another entity. As the owner of lands underlying any number of buildings and as the owner of an option to re-purchase those buildings for a formula-determined price, the CLT has a continuing interest in what happens to these structures – and to the people who occupy them. The ground lease requires owner-occupancy and responsible use of the premises. Should buildings become a hazard, the ground lease gives the CLT the right to step in and to force repairs. Should property owners default on their mortgages, the ground lease gives the CLT the right

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<sup>3</sup> CLT development of condominiums is discussed more fully in a later chapter (*Special Topics*).

to step in and cure the default, forestalling foreclosure. The CLT remains a party to the deal, safeguarding the structural integrity of the building and the residential security of the occupants.

**CLT Variations:** Some CLTs provide a full menu of pre-purchase and post-purchase services. They go to great lengths to prepare people for the responsibilities of homeownership and to support their homeowners, in good times and bad. Other CLTs do little more than monitor and enforce the occupancy, eligibility, and affordability controls embedded in the ground lease and intervene only to prevent the loss of a building faced with foreclosure. The intensity of a CLT's post-purchase involvement in the housing situations of its leaseholders depends largely upon a CLT's capacity. It is also affected, however, by the CLT's own preferences and concerns, as each CLT struggles to find an acceptable, sustainable balance between "backstopping" the success of its newly minted homeowners and leaving them alone to enjoy the privacy and independence that homeownership is supposed to bring.

## **Open, Place-based Membership**

**CLT Classic:** The CLT operates within the physical, geographic boundaries of a targeted locale. It is guided by – and accountable to – the people who call this locality their home. Any adult who resides on the CLT's land and any adult who resides within the geographic area that is deemed by the CLT to be its "community" may become a voting member of the CLT.

**CLT Variations:** Nearly every CLT is a membership organization, drawing its members from a community that is geographically defined. Within the diverse world of CLTs, however, there is considerable variation in the size of that "community" and in the make-up of that membership. A decade ago, the community served by most CLTs was a single urban neighborhood or a small rural town. That has changed. Many CLTs created in recent years have staked out a much wider service area, encompassing multiple neighborhoods, an entire city, an entire county, or, in a few cases, a multi-county region. There are many variations, as well, in the composition and role of the CLT's membership. Some CLT's have opened their membership to individuals who reside outside of the CLT's target area. Other CLT's have expanded their membership beyond individuals, allowing nonprofit corporations, local governments, or private institutions like hospitals, churches, businesses, or a community foundation within their service area to become voting members of the CLT. There are a few CLTs with no membership, although these tend to be situations where the CLT has been established as a subsidiary or an internal program of an existing community development corporation that has a membership of its own, or no members at all.

## Community Control

**CLT Classic:** Two-thirds of a CLT's board of directors are nominated by, elected by, and composed of people who either live on the CLT's land or people who reside within the CLT's targeted "community" but do not live on the CLT's land.

**CLT Variations:** Nearly every CLT has a board of directors that is elected, in part, by the residents who make up its membership. There are many variations, however, in the process of nominating new directors, in the process of selecting those directors, and in the percentage of the board that is directly elected by the CLT's membership. There are a few CLTs where the board is appointed in its entirety by a municipal government, by a community foundation, or by some other corporate sponsor.

## Tripartite Governance

**CLT Classic:** The board of directors of the "classic" CLT is composed of three parts, each containing an equal number of seats. One third of the board represents the interests of people who lease land from the CLT ("leaseholder representatives"). One third represents the interests of residents from the surrounding "community" who do not lease CLT land or live in CLT housing ("general representatives"). One third is made up of public officials, local funders, nonprofit providers of housing or social services, and other individuals presumed to speak for the public interest ("public representatives"). Control of the CLT's board is diffused and balanced to ensure that all interests are heard but that no interest is predominant.

**CLT Variations:** Although every CLT board is distinguished by both a diversity of interests and a balance of interests, the exact make-up of this governing board can vary widely from one CLT to another. Every CLT board has leaseholder representatives, for example, but some CLTs subdivide this leaseholder category among directors who represent the interests of leaseholders occupying single-family homes and those occupying co-op units or commercial buildings. CLTs that are managing rental housing may reserve a leaseholder seat for a tenant. Every CLT has public representatives, but some CLTs fill these seats exclusively with representatives of local or state government, while others include representatives of local churches, foundations, banks, social service agencies, tenant rights organizations, or community development corporations within this "public" category. Many start-up CLTs, moreover, have interim boards that may be composed (and appointed) quite differently than the broadly representative, membership-elected, tripartite board that will ultimately govern the CLT.<sup>4</sup>

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<sup>4</sup> This topic is discussed in greater detail in a later chapter. See "Variations in Governance Structure" under *Special Topics*.

## Expansionist Acquisition

**CLT Classic:** CLTs are not focused on a single project that is located on a single parcel of land. They are committed, instead, to an active acquisition and development program, aimed at expanding the CLT's holdings of land and increasing the supply of affordable housing (and other types of buildings) under the CLT's stewardship. A CLT's holdings are seldom concentrated in one corner of its service area, moreover, but tend to be scattered throughout the CLT's territory so they are indistinguishable from other housing within the same community.

**CLT Variations:** 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, in large measure, 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, however, of a CLT's own priorities in choosing who to serve, what to build, and where to work. Some CLTs have grown quite slowly, each year purchasing a few parcels of land on which are constructed (or rehabilitated) a handful of single-family houses. Other CLTs have grown rather rapidly, benefiting from private donations or public largess that have allowed for the acquisition of larger parcels of land and the steady development of many units of housing. Regardless of the magnitude of their development activity, which may ebb and flow over the years, most CLTs stay committed to adding more land to their holdings and to bringing more resale-restricted, owner-occupied housing under their stewardship.

## Flexible Development

**CLT Classic:** The CLT is a community development tool of uncommon flexibility, accommodating a variety of land uses, property tenures, and building types. CLTs around the country construct (or acquire, rehabilitate, and resell) housing of many kinds: single-family homes, duplexes, condos, co-ops, SROs, multi-unit apartment buildings, and mobile home parks. CLTs create facilities for neighborhood businesses, nonprofit organizations, and social service agencies. CLTs provide sites for community gardens and vest-pocket parks. Land is the common ingredient, linking them all.

**CLT Variations:** There is enormous variability in the projects CLTs pursue and the roles they play in developing them. Some CLTs focus on a single type of housing, like attached townhouses. Some focus on a single tenure, like owner-occupied housing. Others, embracing a more comprehensive mission like revitalizing an entire neighborhood, rebuilding a locality's housing tenure ladder, or redistributing the benefits and burdens of regional growth, take full advantage of the model's flexibility in undertaking an array of residential and commercial projects. Most CLTs do their own development, initiated and supervised by their own staff. Others leave development to nonprofit or governmental partners, confining their efforts to assembling land, leasing land, and preserving the affordability of any housing

located upon it. Between these two extremes of the CLT-as-developer and the CLT-as-steward lie a variety of roles that different CLTs have embraced in expanding their domain.

## **CAUSES OF CONTINUING VARIATION**

The majority of the nation's CLTs incorporate into their organizational structure and their on-going operations most – if not all – of the ten features characteristic of the “classic” CLT. Most of the variations occurring in the model are the result of tailoring the model's most flexible features, especially the resale formula and the development agenda, to meet local circumstances and needs. These variations occur within the framework of the model's basic structure. They do little to alter the structure itself.

Other variations, like establishing a CLT within the corporate shell of another nonprofit, extending the CLT's service area beyond a single neighborhood or town, or modifying the make-up of the CLT's membership or board, go much further in altering the CLT's “classic” structure. Despite these variations, the model's core commitments to land stewardship, perpetual affordability, perpetual responsibility, a balanced structure of governance, and organizational accountability to the people housed by the CLT and to the people residing in the surrounding locale are retained by most organizations that call themselves a CLT.<sup>5</sup>

Experimentation and variation in the model's make-up continues, as the CLT is adapted to new conditions and is applied in different ways. The most common and influential of the factors giving rise to such innovation are the following:

- ❖ **DENSITY OF THE ORGANIZATIONAL LANDSCAPE.** In communities where many nonprofit housing development organizations already exist, it has sometimes made more sense to establish a CLT under the sponsorship – or inside the corporate shell – of another nonprofit, instead of starting a new corporation from scratch. At other times, in other places, an independently incorporated CLT has sought a special niche within a densely populated organizational landscape by focusing on functions or roles that are not only different than those of existing nonprofits but also different than those that “classic” CLTs have traditionally embraced.
- ❖ **DENSITY OF RESIDENTIAL DEVELOPMENT.** In communities where buildable land is very expensive, housing development is usually more practical and economical when it takes the form of multi-unit condominiums, cooperatives, rentals, or densely sited manufactured housing. Multi-unit housing works well with a CLT, but it requires modifications in the CLT's ground lease. It may also engender modifications in the structure of a CLT's membership and its governing board. That

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<sup>5</sup> The National CLT Network, incorporated in 2006, has recognized – and embraced – the model's variability in its own criteria for membership. An organization may become a member of the Network either by exhibiting characteristics of a “classic” CLT, based upon the 1992 federal definition of a CLT, or by meeting organizational and operational criteria for a “CLT Variation.” The latter criteria include the “core commitments” listed above. Membership standards for the National CLT Network can be found in Appendix B.

is not to suggest that the “classic” CLT is to be found only in communities where detached, single-family houses on separate parcels of land are the primary form of housing production. It *is* to say that the experience of developing multi-unit housing has often been a spur to innovation, causing several variations in the “classic” model.

- ❖ **PRIORITIES & REQUIREMENTS OF FUNDERS.** Changes in the model are sometimes provoked by the demands – some reasonable, some not – of public agencies and private lenders on which a CLT must depend for the funding that makes its projects possible. Innovation may also occur when a municipality looks to a CLT to serve as the long-term steward for occupancy, eligibility, and affordability controls mandated by the municipality -- not only for publicly-subsidized housing on a CLT’s land but for inclusionary housing scattered throughout larger residential projects under which the CLT does not own the underlying land.
- ❖ **MARKETING AN UNFAMILIAR MODEL.** The CLT is sometimes modified to make an unfamiliar model of homeownership look and feel more like the deal that is typically offered to more affluent households when buying a home on the open market. By tinkering with the bundle of rights and responsibilities that are provided to a CLT leaseholder/homeowner, especially those affecting the use, improvement, and resale of the CLT home, CLTs seek a workable balance between a form of property that is different enough from traditional homeownership to protect the long-term interests of the community, but close enough to traditional homeownership to attract the investment and support of the individual homebuyer.
- ❖ **DEVELOPMENT vs. ORGANIZING.** It is difficult for any community-based housing development organization to wear two hats. As a developer, a CLT is accountable to a constellation of funders, contractors, deadlines, and demands that drive the business of getting affordable housing constructed and occupied. As an organizer, the CLT is accountable to a constellation of interested parties who lease its land, reside in its community, make up its membership, and serve on its board. While the “classic” CLT serves both sets of interests, this balancing act is not always to everyone’s liking. For CLTs that favor development over organizing, especially where a CLT program has been grafted onto the structures and programs of an existing community development corporation or where a CLT has been initiated by a municipal government, there has been a tendency to modify, dilute, or even abandon membership features or board features that make a CLT directly accountable to a local constituency of lower-income residents. For CLTs that favor organizing over development, there has been a tendency to spend more time building and sustaining the organization than building and managing an expanding stock of affordable housing. The most successful CLTs have found a balance between these two extremes, even when modifying basic features of the “classic” CLT.
- ❖ **REGIONAL OPPORTUNITIES & RESOURCES.** Many CLTs are tempted to expand the territory and to modify the structure of the “classic” model because of opportunities and resources available to them only if they operate on a regional basis. Pulled by the prospects of doing more (or getting more), they may also be pushed by

the demands of local constituents who want a wider choice of place in seeking a CLT home.

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Because of factors such as these, the world of CLTs has become increasingly diverse. The model has continued to change. Indeed, much of the growth in the CLT movement in recent years can be attributed to the model's unique plasticity. Something is lost whenever fundamental features of the "classic" CLT are altered, for there are sound philosophical and practical reasons for every one of them, but something of value may also be gained. Over time, some of these variations will be discarded, while others may prove so beneficial, so successful that they eventually become a permanent part of what the "classic" CLT is defined to be. The community land trust remains a dynamic model, which is a large part of its strength and appeal.