STARTING A COMMUNITY LAND TRUST IN TUCSON

by

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ABSTRACT

The purpose of this report was to conduct research on shared equity models; particularly community land trusts so that the City of Tucson, Arizona could have guidance on how to initiate development of a community land trust. In addition to exploring shared equity models, the report looks at methods of marketing and funding community land trusts. Another section constructed from original research looks at four community land trusts located in cities with comparable population levels, poverty rates, and housing costs. These community land trusts included the Colorado Community Land Trust located in Denver, Colorado; the Portland Community Land Trust located in Portland, Oregon; Sawmill Community Land Trust located in Albuquerque, New Mexico; and Sabin Community Development Corporation located in Portland, Oregon. These community land trusts were surveyed to provide information on how well cities of similar demographic makeup have fared using the community land trust model. A further section provides information on the necessary steps for incorporating a community land trust as a nonprofit in the State of Arizona. An appendix contains information on developing articles of incorporation and bylaws for a community land trust.
CHAPTER 1-A BRIEF HISTORY OF U.S. HOUSING POLICY

Introduction

Many communities have instituted community land trusts (CLTs) to maximize provision of affordable housing opportunities. This report will provide information to help the City of Tucson create a citywide CLT. The role of this report is not to encourage an alternative to existing housing programs; indeed in a following chapter it will be shown that the City has been quite effective in achieving its goals using existing programs. Rather this report will provide an understanding of CLTs and other shared equity housing models so that the City may supplement its existing programs with a shared equity model (if it so chooses). What follows is a brief history of housing policy in the U.S.

In 1949, the U.S. Congress proclaimed they intended to enable every American family to enjoy “a decent home and a suitable living environment.” The government was essentially announcing that they planned to widen their role in providing shelter for the poor and in creating homeownership opportunities for all segments of society. Indeed, in the decades following the depression the federal government played a larger role in addressing unmet housing needs. The overall quality of housing increased and more Americans became homeowners.¹

But, these efforts decreased dramatically in the 1980s. In 1982, President Reagan adopted a policy of reducing or eliminating governmental housing policies and regulations, relying on the belief that the private market could do a better job of meeting

housing needs.\textsuperscript{2} The Administration pursued an anti-HUD (Department of Housing and Urban Development) agenda; enacting budget cuts and removing HUD’s authority to construct low-income units in the future. Furthermore, they intended to end subsidized housing programs and replace them with programs involving short-term vouchers. Reagan’s goals were opposed by low-income housing advocates and their allies in Congress. The result was a stalemate between Reagan and his opponents.\textsuperscript{3}

Throughout the 1980s homelessness was on the rise. A decreased supply of low rent units, rising poverty rate, and the deinstitutionalization of mental health patients all contributed to the problem. More than ever there was a greater need for homeless shelters, social services, and low-income housing. Despite the crisis conservative’s maintained an ideology that homelessness was one’s own fault and did not want to address the problem. Nonetheless, growing pressure pushed Reagan to sign into law the 1987 McKinney Homeless Assistance Act. This Act provided funding for shelter programs and called for the creation of an Interagency Council on the Homeless to address problems faced by the homeless.\textsuperscript{4}

At the same time deregulation was taking place, wealthy baby boomers, aided by lower property taxes and tax deductions, began to spend more on homes. Some even purchased second and third homes. In the 1990s, this trend was spurred forward by a booming economy and appreciating stocks. During these years, the Clinton

\textsuperscript{2} Ibid., 1-2
\textsuperscript{4} Ibid., 150
Administration, Fannie Mae, and many nonprofit organizations made great efforts to remove financial and discriminatory barriers to owning a home. This enabled many individuals to become first-time homeowners. The demand for housing rose greatly and the price of real estate was driven up. Developers began to find it more profitable to build expensive housing as opposed to affordable housing.\(^5\)

As HUD states, “The economic expansion of the 1990s obscured certain trends and statistics that point to an increased, not decreased, need for affordable housing.”\(^6\) HUD relates that “The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing.”\(^7\) The Joint Center for Housing Studies of Harvard University recently showed in its report *The State of the Nation’s Housing 2007* that between 2004 and 2005 number of households with housing cost burdens exceeding 30 percent of income increased by 2.3 million, and that in 2005, the number of households in this group totaled 37.3 million.\(^8\) Furthermore, HUD has found that there are approximately 12 million renter and homeowner households that currently spend over 50 percent of their annual income on housing, and that families with a single full-time worker earning minimum wage are unable to afford fair-market rent for a two-bedroom apartment in any part of the U.S.\(^9\)

\(^7\) Ibid
\(^9\) See note 6 above.
In its Affordable Housing Needs 2005: Report to Congress, HUD revealed, that in recent years, very low income renters (less than 50 percent AMI [area median income]) have spent a substantial portion of their incomes on housing and that many of these households live in substandard housing. In addition, HUD has found that there continues to be a decline in the availability of affordable units available to very low-income renters.

In its report, HUD used the term “worst case needs” and defined it as “renters with very low incomes who have one of two ‘priority problems’ either paying more than half of their income for housing (‘severe rent burden’) or living in severely substandard housing.” HUD showed that while in 2003 there were 5.18 million households with worst case needs; in 2005 the number of worst case needs reached a total of 5.99 million. In all, between 2003 and 2005, the number of worst case needs increased by approximately 817,000 (a 16 percent increase). HUD also found that 77 percent of these worst cast needs households were extremely low income households (less than 30 percent AMI) while the remaining 23 percent exceeded the low income threshold (80 percent AMI).

In the report, HUD described severely inadequate housing as housing that suffers from an array of physical problems that may relate to heating, plumbing, electricity, public spaces or maintenance, and defined gross rent that exceeds 50 percent of income.

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11 Ibid
12 Ibid
13 Ibid., 2
14 Ibid., 13
as a “severe rent burden.” In 2005, 520,000 worst case needs households were living in severely inadequate housing units and 260,000 also had severe rent burden as a housing priority problem.

HUD also showed that there was an insufficient supply of affordable housing available to very low-income households and the availability of such units had continued to decline. HUD suggested that this was due in part to higher-income households seeking occupancy in these units as well. In 2003, the ratio of affordable rental units to very low-income renter households was 81:100. In 2005, there were only 77 affordable rental units available for every 100 very low-income renter households. The situation for extremely low-income renter households was even more serious with only 40 affordable rental units available per 100 households. This too, represented a slight decrease in availability as there were 43 affordable rental units available per 100 extremely low-income households in 2003.

The dwindling stock of affordable housing and rising costs of both rent and home prices are problems that have become increasingly addressed at the state and local level. The following chapter will address some of these efforts. Shared equity housing models such as the community land trust model provide an additional avenue for cities like Tucson to create affordable housing opportunities. As mentioned earlier, this report will provide guidelines for the City of Tucson to follow if it chooses to launch a CLT.

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15 Ibid., 2  
16 Ibid  
17 Ibid., 4  
18 Ibid  
19 Ibid
CHAPTER 2-METHODOLOGY

The information used to construct this report came from a variety of sources. Most of these were literary sources posted online. The report contains information on previous and current affordable housing programs used at the state and local level, descriptions of shared equity models and how they function, including information on subjects such as resale formulas, marketing and homebuyer selection, and sources of CLT project funding.

Cities from a comprehensive list of community land trusts in the United States1 were analyzed for similarities to Tucson. Comparisons were first made for population size, then for poverty rate, and finally for median home price. The most recent data that was available to all cities for comparison was used. The cities’ populations were within 70,000 of Tucson’s population (see Table 1). Poverty rates were within a 5 percent range of Tucson’s poverty rate.

Table 1: Population and Poverty Rate by City

<table>
<thead>
<tr>
<th>City</th>
<th>2006 Population</th>
<th>2000 Poverty Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tucson</td>
<td>518,956</td>
<td>18.4</td>
</tr>
<tr>
<td>Albuquerque</td>
<td>504,949</td>
<td>13.5</td>
</tr>
<tr>
<td>Denver</td>
<td>566,974</td>
<td>14.3</td>
</tr>
<tr>
<td>Portland</td>
<td>537,081</td>
<td>13.1</td>
</tr>
</tbody>
</table>

Source: U.S. Census Bureau2

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The most up-to-date median home prices were available by region. With the exception of the Albuquerque region, the median home for these regions were within $20,000 of the Tucson region (see Table 2).

<table>
<thead>
<tr>
<th>Region</th>
<th>2005 Median Home Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tucson</td>
<td>$229,000.00</td>
</tr>
<tr>
<td>Albuquerque</td>
<td>$166,600.00</td>
</tr>
<tr>
<td>Denver-Aurora</td>
<td>$246,400.00</td>
</tr>
<tr>
<td>Portland OR-WA</td>
<td>$242,000.00</td>
</tr>
</tbody>
</table>

Source: National Association of Realtors

Albuquerque and Denver each have one CLT while Portland has two. Albuquerque’s CLT is the Sawmill Community Land Trust and Denver’s CLT is the Colorado Community Land Trust. Portland’s two CLTs are the Portland Community Land Trust and Sabin Community Development Corporation.

Questions were composed in survey form and emailed to the selected cities. The collected information (which helped to gauge how well a city like Tucson might fair using the CLT model) was analyzed and summarized in a table. The CLTs were each asked eleven questions (for the survey questions see Appendix A). Some of the questions were answered through websites prior to sending surveys. Questions 1 thru 7 were

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adapted from a resale study on the Burlington Community Land Trust in Burlington, Vermont. I composed questions 8 thru 11 to acquire additional information on property taxes, resale formulas, funding, and personal determinations of success. The surveys were emailed to each CLT. For a summary of the results see Table 4 in Chapter 7. The individuals who responded to the surveys were as follows: Kimball Crangle of Colorado Community Land Trust, Allison Handler of Portland Community Land Trust, Connie Chavez of Sawmill Community Land Trust, and Tyesha McCool of Sabin Community Development Corporation.

Additional information was yielded from the Institute for Community Economic’s (or ICE’s) Community Land Trust Legal Manual. This source provided information on how a new CLT should structure articles of incorporation, what state requirements must be addressed, and what language to use to meet IRS requirements for tax exemption. To supplement this research, information was collected on the Arizona Revised Statutes that apply to starting a CLT in the State of Arizona. The Community Land Trust Legal Manual also provided information on how to structure the ten articles that must be included in the bylaws. The sum total of this latter information was organized to provide a list of specific steps that the City of Tucson should take to initiate the creation of a CLT.

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CHAPTER 3-CURRENT PROGRAMS AND STRATEGIES

Introduction

There are a number of programs and strategies employed by the public and private sector in the City of Tucson to provide affordable housing. These include many coming from state or from nonprofit and for-profit developers. With the variety of programs and different approaches to the problem, there is always the question of how effective the programs are and what kind of conditions are being addressed.

State and local programs

Since the early 1980s, project-based Section 8 funds have been in short supply. States and local governments have created their own programs similar to Section 8. But these programs have required higher local tax increases for funding, causing the rich in some cases to abandon the poor for another area. Nonetheless, there is evidence that, in the past, state and local programs have proven effective. The number of renters in poverty who were assisted by state and local programs for reducing rent rose from 314,000 in 1987 to 380,000 in 1995. State and local programs provided assistance to poverty level homeowners as well, although the results have were less consistent. For example, in 1987, the number of poverty-level homeowners assisted by state and local programs was 220,000. This increased to 314,000 in 1991, but fell back down to 263,000 in 1997. This

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does not necessarily indicate that states and local governments were withdrawing resources as there was speculation that the demand for assistance is not as great.²

It is worth noting that there is a distinction between the term “poverty-level” used by the U.S. Census Bureau and the term “low-income” used by HUD. The U.S. Census Bureau uses various poverty thresholds based on household income and family size. For example, the U.S. Census Bureau’s Poverty Thresholds 2006 shows that a family of four with two children under 18 years of age is living in poverty if their annual household income is less than $20,444.³ HUD defines low-income as renters whose income does not exceed 80 percent of AMI.⁴ Most local governments use HUD’s low-income definition in their housing assistance programs. This can vary greatly from the U.S. Census Bureau’s poverty-level thresholds since AMI varies from area to area.

State housing finance agencies (HFAs) have learned to pattern local activities and programs after what was exclusively the domain of the federal government. HFAs are charged with allocating low-income housing tax credits and tax exempt bonds to private developers of affordable housing and have the authority to distribute federal HOME funds. Programs administered by HFAs share some common elements from state to state. For example, most states make use of below-market-rate financing for construction, acquisition, and rehabilitation of affordable housing as well as loan guarantees for lenders

² Ibid., 301
³ U.S. Census Bureau, “Poverty Thresholds 2006,” U.S. Census Bureau
who fund affordable housing. In addition, many HFAs have participated with the FHA in risk sharing programs.\(^5\)

Many local governments attempt to make production of affordable housing more efficient through housing trust funds, revision of building codes and standards to reduce development costs, and a simplified permitting process for development of subsidized units. With the aid of HFAs, local governments have employed many creative strategies to finance affordable housing including real estate taxes, bond financing, public land donations, linkage programs, inclusionary zoning, credit enhancement (to reduce risk), flexible land use and development regulations, and property tax abatement.\(^6\)

**Private Sector Role**

Because some federal funding has become less accessible, the private sector is playing a more active role in the provision of affordable housing. The U.S. Treasury encourages private investment through low-income housing tax credits and tax-exempt rental bonds. Sometimes private for-profit developers produce affordable housing through the mandates of linkage programs or inclusionary zoning. Linkage programs require a private developer to make some contribution, whether monetarily or through construction, towards the development of low-income housing in order to gain permission for another type of development. Inclusionary zoning requires that a certain

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\(^5\) Ibid., 309

\(^6\) Ibid., 310
percentage of units within a new market-rate development be available as affordable housing for low-income people.\textsuperscript{7}

Although for-profit developers are sometimes considered the most efficient producers of affordable housing, they often must be thoroughly incentivized. Furthermore, requirements created by linkage programs and inclusionary zoning are ineffective in weak housing markets. Because of this, many local governments have turned to nonprofit developers such as community development corporations (or CDCs). CDCs often use a grassroots, bottom-up approach and are more likely than for-profit developers to include neighborhood members in the development process. They are also less likely to displace residents and have an easier time acquiring charitable and public funds. The rate of production by CDCs has held steady over the past several decades. CDCs produced 20,000 to 30,000 units of affordable housing per year between 1960 and 1990. This equals a combined total of 736,000 units, an amount equal to 14 percent of all federally assisted units.\textsuperscript{8} However, CDCs suffer from their own problems. CDC staffs are often small and overworked; sometimes lacking expertise in financial feasibility and financial packaging. To compensate, CDCs often turn to intermediaries in the form of technical support and fund raising.\textsuperscript{9}

\textsuperscript{7} Ibid., 311
\textsuperscript{8} Ibid., 311
\textsuperscript{9} Ibid., 313
A local perspective

In 2004, it was estimated that a wage of $26.44 an hour was necessary to afford a median priced home in Tucson. In 2006, key workers such as police officers, firefighters, teachers, and nurses did not meet the minimum financial qualifications to buy a home. Frequently, two incomes were necessary to afford a home. In 2004 the average sale price of a home in Tucson was $205,188, up 32 percent from four years prior when the average sale price was $155,907. Unfortunately, wages have not kept pace with this increase in housing prices. Another problem is that of aging housing. It is estimated that in 2010 Tucson will have nearly 54,000 homes that are fifty years old or even older. The owners of these homes will face mounting repair needs that low-income families will find difficult to afford. Even now low-income families occupy 72 percent of all homes that are 50 years old and older.10

To address these issues, the City of Tucson runs several housing programs. These programs are operated under the Community Services Department. The first of these programs is the Housing Program. Within this program are three more specific programs including Rental housing, Homeowners, and Downtown housing. The City of Tucson and Pima County’s Public Housing Authority operates the Rental program. The rental housing program helps to provide housing to families, seniors, and individuals with disabilities. In addition the program administrates the distribution of Section 8 funds. The Homeowners program helps lower income families by offering affordable repair loan and

grant programs. The Downtown housing program is dedicated to encouraging more people to work downtown as part of a revitalization process. The Community Services Department works with both developers and neighborhoods to achieve the goals of this program.11

The City of Tucson Community Services Department also directly provides several programs. These include the Community Development Block Grant Program (CDBG), the HOME program, Homeless programs, and Human Services. CDBG is used by the mayor and city council to provide funding to neighborhood programs as well as nonprofit agencies. HOME program funds are dedicated to developing housing. Homeless programs are used to provide financial support to organizations that serve the homeless. The program is also used to resolve issues resulting from the presence of homeless individuals on property owned by the City. Twice a year the Human Services program provides funding to nonprofit organizations that provide human services. The City of Tucson also makes use of various planning documents to provide guidelines for its housing strategies. Such documents include the Housing Element of the Comprehensive Plan, the City of Tucson/Pima County Consolidated Plan, and Continuum of Care for Homeless.12

In addition to the aforementioned programs, the City of Tucson receives additional HOME funds to provide downpayment assistance to qualified low-income homebuyers. This program is known as the American Dream Downpayment Initiative (ADDI). To qualify for this program a household must meet the following requirements:

11 Ibid., 4
12 Ibid
The household’s income must not exceed 80% AMI,

The household must be a first time homebuyer, or not have owned a home in the previous three years,

The household must not have liquid cash assets in excess of $10,000, and

The household must make a minimum $1,000 contribution towards the purchase of their home; these funds may be received as a gift, but not borrowed.

The amount of downpayment a household receives varies according to three specified areas and ranges from $5,000 to $20,000.\(^\text{13}\)

The City of Tucson also subsidizes nonprofit developers to provide affordable housing. With this model, a lien is used that is based on the difference between the mortgage the homeowner can afford and the appraised value of the house. Sometimes, the amount of the lien must be repaid after a certain number of years; at other times this amount is paid following resale. A difficulty faced by this model is that the subsidy required for each home is becoming high; sometimes up to $30,000 or even $50,000.\(^\text{14}\)

Within the 2000-2005 Consolidated Plan are specific annual and five year goals targeted at helping low-income people. Table 3 was reproduced from the League of Women Voters of Greater Tucson’s November 2006 report on affordable housing in Tucson and Pima County. The table reveals that City of Tucson does an outstanding job at meeting its goals. In every year following 2000, the City exceeded its annual goal of creating or preserving 1,000 affordable housing units. In fact, the combined excess over


\(^{14}\) Emily Nottingham, email message, August 27, 2007.
the five-year period totaled 7,159 units. In addition, the City has exceeded its annual goal of assisting 10,000 homeless people. The City has exceeded its goals in every area with the exception of Agency Facilities and Neighborhood Revitalization. This was due to rising costs of construction and a greater emphasis placed on creating opportunities for affordable housing.\(^\text{15}\)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Annual Goals</th>
<th>Accomplishments</th>
<th>Five-Year Goals</th>
<th>Accomplishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistance to Homeowners</td>
<td>712 households</td>
<td>713 households</td>
<td>2,500 households</td>
<td>5,046 households</td>
</tr>
<tr>
<td>New Homeownership Opportunities</td>
<td>48 units</td>
<td>120 units</td>
<td>225 units</td>
<td>935 units</td>
</tr>
<tr>
<td>Assistance to Renters</td>
<td>50 households</td>
<td>57 households</td>
<td>500 households</td>
<td>1,178 households</td>
</tr>
<tr>
<td>Assistance to Homeless</td>
<td>10,000 persons assisted</td>
<td>18,171 persons assisted</td>
<td>50,000 persons assisted</td>
<td>8,201 persons assisted</td>
</tr>
<tr>
<td>Assistance to Persons with Special Needs</td>
<td>10,000 persons assisted</td>
<td>20,781 persons assisted</td>
<td>50,000 persons assisted</td>
<td>45,217 persons assisted</td>
</tr>
<tr>
<td>Agency Facilities</td>
<td>$1 million</td>
<td>$367,192</td>
<td>$5 million</td>
<td>$2,739,484</td>
</tr>
<tr>
<td>Neighborhood Revitalization</td>
<td>$1.2 million</td>
<td>$929,462</td>
<td>$6 million</td>
<td>$3,649,025</td>
</tr>
<tr>
<td>Public Services</td>
<td>13,954 persons assisted</td>
<td>24,482 persons assisted</td>
<td>69,770 persons assisted</td>
<td>120,081 persons assisted</td>
</tr>
</tbody>
</table>

Source: League of Women Voters of Greater Tucson\(^\text{16}\)

**Conclusion**

Since the 1980s state and local governments have been providing more affordable housing programs. HFAs in particular have provided various incentives to the private sector such as below-market rate financing and tax exempt bonds. In addition, to these

\(^{15}\) Ibid
\(^{16}\) Ibid., 5
financial incentives state governments revised building codes and simplified permitting processes to encourage private development of affordable housing. Where incentives fail the local government has made use of inclusionary zoning and linkage programs. In areas where the housing market is weak local governments have turned to effective nonprofit developers of affordable housing such as CDCs. In recent years, City of Tucson has experienced rising housing costs and stagnating wages. Despite these problems the City exhibits a superb ability to achieve affordable housing goals set in their Consolidated Plan.
CHAPTER 4-SHARED EQUITY HOUSING

Introduction

This chapter discusses shared equity housing (also known as third sector housing). I begin with a description of exactly what third sector housing is and what its benefits are. Because the goal of many shared equity models is homeownership, I also discuss benefits of owning a home. Within this discussion is a discourse on the problems low income households often face when they attempt to become homeowners without any assistance. In this chapter are descriptions of the specific shared equity models and references to several studies examining their effectiveness in preserving affordability. In addition, there is a description of the various mechanisms used by these models to attain lasting affordability. These mechanisms include mortgages, deed covenants, and ground leases. I also present information on the various controls sponsors of shared equity housing use to prevent foreclosure. Because all shared equity models use a resale formula of some kind, a discussion of the four major types of resale formula is presented. The chapter ends by examining how shared equity sponsors and assessors may resolve property taxation as well as how CLTs in different areas have dealt with the question of how to apply property taxes.

Third Sector Housing

Third Sector housing is housing that involves shared equity ownership. Shared equity homeownership restricts the equity an owner can retain from market appreciation to ensure that a home remains affordable to the next buyer. Shared equity homeownership
often makes use of a community-based support system so that risks associated with homeownership, such as default can be reduced. The neighborhood benefits from greater stability because there is a much smaller risk of abandonment, foreclosure, and absentee ownership. Investments in the home made at the owner’s expense are usually returned to them when they leave.\(^1\) Furthermore, owners are usually able to build some amount of equity upon resale.\(^2\) There are many benefits from ownership not tied to resale equity. Homeownership provides a sense of security, the ability to accumulate assets, and the ability to leave a legacy for one’s heir. Ownership also provides access to the tax deductions, homestead exemptions, and credit enhancements not available to renters.\(^3\) The social capital that results from ownership is important. Homeowners have a greater tendency to involve themselves in local politics and voluntary organizations than renters. Neighborhoods with better social networks exhibit greater civic engagement, and lower rates of crime and unemployment. Shared equity ownership fosters social capital because residents participate as a unit to keep up and improve their homes. They also take part in the government of the sponsoring organization charged with maintaining the amenity, security, or affordability of their homes. Often, these participants will take this experience a step further and involve themselves in local block groups, watch groups, or civic associations.\(^4\)

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\(^2\) Ibid., 14

\(^3\) Ibid., 22

\(^4\) Ibid., 26
Unfortunately, low-income households who attempt to purchase market-rate housing that they realistically cannot afford run into problems. They often incur debt that they are unable to repay. A family’s resources are diverted from other pressing needs such as food, or medical care in order to make mortgage payments. Low-income owners who wish to hold onto to their homes to realize equity often must survive many setbacks such as changing incomes, unexpected damage or repairs, and an adjustable rate mortgage that compromises their budget. If foreclosure does occur an individual’s ability to gain access to credit or capital may become severely crippled for years. Furthermore, foreclosures in low-income communities create great instability and undo revitalization efforts.\(^5\) Often the homes that low-income families own generate very little market appreciation. Frequently these homes are older, in need of repair, or located in disinvested or high crime neighborhoods with few opportunities for employment.\(^6\) Only 47 percent of first-time, low-income homebuyers occupy their homes five years after purchasing a market rate home. The amount of subsidy required to help a low-income family purchase a home has grown larger in recent years. In some areas this amount is over $100,000 per unit. The loss of these subsidies (and affordability) that occurs upon resale is difficult to justify.\(^7\)

Estimates on the number of shared equity units in the U.S. vary. Some have estimated there are as few as a half-million units most being in limited equity cooperatives. Others believe there are as many as 800,000 units, the majority being in

\(^5\) Ibid., 23  
\(^6\) Ibid., 24  
\(^7\) Ibid., 25
deed-restricted housing, which is the fastest-growing form of shared equity homeownership. The number of nonprofits, lenders, and government agencies sponsoring shared equity homeownership has been increasing in recent years. Many cities and states oversee inclusionary housing programs, housing trust funds, homeownership assistance programs, and housing incentive programs that mandate the use of contractual controls on eligibility, occupancy, and affordability as part of these initiatives.\(^8\)

There are three well established models of limited equity homeownership. These include deed-restricted housing, the limited equity cooperative (LEC), and the community land trust (CLT). With deed-restricted housing the title to the land and the title to the building may be held separately. In the case of condos each owner holds the “unit deed” to his or her unit. This deed entitles the owner to the interior space and includes the surface treatments of walls, floors and ceilings. The structural elements above or beneath the surface are not owned and neither are exterior elements such as hallways, sidewalks, or the surrounding land. Rather these elements are jointly owned by those who occupy the units. A unit cannot serve a purpose other than that of a primary residence and use must be for residential purposes. Deeds contain an affordability covenant that ensures homes are neither sold to ineligible buyers, or for the highest price the market will bare. A unit may be improved, mortgaged, or given away but these options are constrained by the contract.\(^9\)

Outside parties may be responsible for enforcing the covenants. Public agencies that sponsor deed-restricted housing will often assign the task of enforcing the covenants

\(^8\) Ibid., 18
\(^9\) Ibid., 30
to a nonprofit organization. Covenanted housing often is the result of an inclusionary ordinance where a certain percentage of the housing must be affordable. In these mixed income developments a home owner’s association (HOA) is often charged with the task of enforcing the covenants. Placing this responsibility into the hands of an HOA may prove to be a risky venture. Because, most of the units are market-rate the HOA may neglect its responsibility to enforce the deed_restrictions on the affordable units. It may even be in the best interest of the HOA to violate the covenant to yield greater profits. HOAs are generally not very good stewards of condo resales, and because of past failures more and more deed-restricted units are overseen by an administrative entity in the form of a nonprofit organization or a public agency.

Housing cooperatives generally fall into three categories in the U.S.: market-rate cooperatives, limited equity cooperatives, and zero equity (or par value) cooperatives. Cooperative shares are purchased and resold by individual homeowners. These shares represent each individual stake in the community and the value of their property. The most common type of housing managed under a cooperative is a multiunit apartment building although many other types of housing have been managed such as single-family housing, row houses, mixed condos, and mobile home parks. With a market-rate cooperative, transfer value of the corporate shares is determined by market appraisal.

Directors have no authority over the price for which units sell and there is no provision to ensure units remain permanently affordable. In contrast limited equity and zero equity

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10 Ibid
11 Ibid., 31
12 Ibid., 39
13 Ibid., 40
14 Ibid., 41
cooperatives are concerned with maintaining affordability. Limited equity cooperatives allow for a modest amount to be collected from the difference between the initial price and the resale price of corporate shares. Zero equity cooperatives do not allow an owner to collect any growth in equity on his or her investment; the homes are resold at the same price as the initial purchase. Housing cooperatives are administered by state-chartered corporations. Only those who occupy the housing may become shareholders. Occupants while they hold the shares do not hold title to their homes.\textsuperscript{15} Rather the exclusive use of the home and property is secured through a proprietary lease agreement between the corporation and the owner.\textsuperscript{16} The corporation holds the deeds and mortgages, and is the owner of all properties. The corporation is also responsible for paying municipal taxes and fees associated with the real estate.\textsuperscript{17} Members have voting rights in the corporation and have control over its assets, enforcement of use restrictions, and resale of shares. An owner’s interest in the corporation cannot be sold for more than allowed by the resale formula as determined by three documents: the subscription agreement, the stock certificate, and the bylaws. The subscription agreement “serves both as a ‘buyer-beware’ disclosure document and a purchase-and-sale contract for the prospective purchaser of co-op shares.” The stock certificate “evidences the occupant’s ownership of a specified number of co-op shares.” The bylaws “documents limit resale value and equity and usually give the corporation preemptive right to repurchase shares for the resale formula determined price.” Sometimes resale of a share will yield substantial equity at other

\textsuperscript{15} Ibid., 39
\textsuperscript{16} Ibid., 40
\textsuperscript{17} Ibid., 39
times it will not; this varies depending on market conditions. In most cooperatives the directors repurchase shares and resell them to new tenants; this prevents resale restrictions from being violated.\textsuperscript{18}

Cooperatives are governed by elected boards of directors. With limited equity cooperatives each housing unit has one vote. However, market-rate cooperatives differ in that votes are assigned based on the number and value of shares in the corporation. In this instance those who occupy more valuable units own more shares and are therefore allowed to cast more votes.\textsuperscript{19} The structure of a cooperative’s government may be considered flawed by some because in highly appreciated markets the members face pressure to amend and relax the bylaws to allow more gain on equity. Because of this risk a few variations on the cooperative model have been developed. The first of these is a hybrid model of the limited equity cooperative and the CLT. With this model cooperatives are developed on land that is leased by a CLT. The ground lease preserves the affordability. Another variation is a limited equity cooperative that has incorporated the use of deed-restrictions. Eligibility and affordability standards and protections reside in the deed covenants and outlive the provisions of the regulatory agreement which are extinguished when the mortgage has been paid off. Affordability may also be protected by using an alternative form of government. Sometimes boards are made up of people who are not members or residents. At other times outside directors are appointed by the nonprofit organization that created the cooperative. Another method is to allow additional outside directors to be appointed by directors within the cooperative.

\textsuperscript{18} Ibid., 40
\textsuperscript{19} Ibid
Regardless of which method is used the purpose of these governmental variations is to prevent the self-interest of the shareholders from superseding the greater goal of preserving affordable housing.\textsuperscript{20}

With CLTs the rights of the owners and the restrictions on use and resale are similar to those found with deed-restricted housing. However, a ground lease rather than a deed-covenant is used to enforce requirements. Because the goal of most CLTs is permanent affordability, contractual controls last for the duration of the lease. A community-based nonprofit usually owns the land and part of its mission is often acquiring and maintaining permanent ownership of parcels. Typically, individual homes are owned by residents, but CLTs have been known to make use of multiunit cooperatives, multiunit condos, multiunit rental complexes, and mixed-use structures that combine residential and commercial space. CLTs do not resell land.\textsuperscript{21} Rights are conveyed through a title deed and the ground lease.\textsuperscript{22} Leases typically last for 99 years unless a state law mandates shorter duration. These leases are also renewable and inheritable.\textsuperscript{23} Absentee ownership is not allowed and subletting is severely restricted. If subletting is allowed it is often only for a limited duration and requires the permission of the CLT. If an owner wishes to conduct major improvements it may require permission from the CLT as well. The CLT also has the right to force repairs of hazardous buildings. In cases of defaulted mortgages a CLT may cure in order to prevent default. If an owner chooses to sell the CLT has first right to repurchase the home according to a formulated

\textsuperscript{20}Ibid., 41  
\textsuperscript{21}Ibid., 34  
\textsuperscript{22}Ibid., 35  
\textsuperscript{23}Ibid., 34
price. When a CLT approves a resale without purchasing back the building it will closely monitor the transaction to ensure that an eligible buyer is chosen and the resale formula is applied.\textsuperscript{24}

CLTs are designed as community-based organizations and their membership is open to all who live in the geographic area defined as its community. Leaseholders are always members by default. A CLT is governed by a board of directors whose structure is meant to balance the interests of the community with interests of the leaseholders. A board is structured in the following fashion: one-third is elected representatives of the leaseholders, one-third is elected representatives of non-leaseholders, and the final one-third is nominated or appointed by the previous two-thirds. Sometimes this final third is set aside for representatives for other community-based organizations, private lenders, or representatives of local government.\textsuperscript{25}

**How effective are shared equity models in preserving affordability?**

Very few cities, states, or nonprofits have systematically collected and analyzed data on resale-restricted, owner-occupied housing to models to gauge their performance. The Coalition for Nonprofit Housing & Economic Development conducted a study in 2004 which looked at the performance of 30 Washington, DC-based LECs in terms of maintaining long-term affordability. The study found that in comparison to market-rate, multifamily rentals or condos, LECs did a better job of retaining affordability. It was revealed that the median monthly membership charges of the LECs were around half the

\textsuperscript{24} Ibid., 35
\textsuperscript{25} Ibid
amount of the HUD 2003 fair market rental rate for the area.26 Studies of LECs in New
York City and Chicago revealed a similar trend. A study conducted by Saegert et. Al. in
2003 found that among 49 LECs in Manhattan’s Clinton neighborhood, despite signs of
gentrification in the area, most remained affordable to lower-income residents.
Furthermore these LECs were in better physical condition, and had lower monthly costs
than neighboring housing. In 2004, the Chicago Mutual Housing Network conducted a
study of 206 Chicago LECs and market-rate cooperatives. The study found that market-
rate cooperative shares were selling at an average of $75,000 during a period when the
average price of a market-rate house or condo was $224,000. In 2003, Davis and
Demetrowitz studied 97 limited equity houses and condos that were sold and
subsequently resold through the Burlington Community Land Trust (BCLT) between
1988 and 2002. This study revealed that the affordability of homes had improved
between successive owners. On initial sale the average cost of a BCLT home was
affordable to a household earning 62 percent of AMI. Upon resale these homes were
affordable to households earning 57 percent of AMI.27

**Mechanisms to achieve longer-term affordability goals**

There are three mechanisms used by shared-equity models to provide long-lasting
or permanent affordability for homes. These include mortgages, deed covenants, and
ground leases. Mortgages are used to place a lien on the home requiring the value of the
subsidy to be maintained for future use. This mortgage, however, is not the primary

26 Ibid., 109
27 Ibid., 110
mortgage, and the provisions of this mortgage are subordinate to the provisions of the first mortgage. Often, the second mortgage covers the low-interest or no interest loan amount granted by a public agency to the buyer. Under these circumstances the loan will not need to be repaid if the owner obeys the rules of reselling the home to another low-income buyer as according to the rules of the resale formula. But, if the owner pays off the first mortgage he or she is under no obligation to resell the home to an income eligible buyer or according to the resale formula. Also, violation of the mortgage can sometimes place the home in default and allow the lender to foreclose on the property.

Another disadvantage of this mechanism is that mortgages only last a maximum of 30 years and hence the restrictions are only enforceable for this duration. Further, the mortgage only applies to the current owner and becomes void on resale unless the same mortgage is transferred to the next owner.

Deed covenants place restrictions on houses and land, or individual units. Restrictions commonly apply to sale price and buyer eligibility, and require continued occupancy. Covenants also frequently require continued maintenance of the unit. These covenants can be temporary or run with the land. In many states, perpetual restrictions are not legal. In some states, statutes may limit the exact duration of

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29 Davis, Shared Equity Homeownership, 79.
30 See note 28 above.
31 Davis, Shared Equity Homeownership, 31.
32 See note 28 above.
33 Davis, Shared Equity Homeownership, 113.
34 See note 28 above.
restrictions or require the interested party to periodically and publicly restate its interest.\textsuperscript{35} Once the covenant expires the home may be sold for any price the market will bare. Covenants are typically subordinate to mortgages and a foreclosure will allow the lender to sell at any price.\textsuperscript{36} However, sponsors often reserve the first right to repurchase the home in these circumstances.\textsuperscript{37} Sponsors often assume deed covenants are “self-enforcing.” They believe that lawyers or an insurance company will examine the resale restrictions prior to resale and warn the parties that the title will be clouded if a property is sold in violation of the covenant. Some sponsors become more directly involved in the resale process. They establish their right to review and approve resale prices and determine eligibility of buyers by inserting these provisions into the covenant. As mentioned above, they often include a provision granting them the first right to repurchase the home.\textsuperscript{38} While covenants may become “self enforcing” during times of resale, sponsors must be careful to not overlook the enforcement of other restrictions in the interim. For example, sponsors must be careful to monitor and enforce restrictions on subletting, maintenance, and absentee ownership.

Ground leases regulate the resale and use of structures on leased land. The ground lease is the primary tool used by CLTs to ensure permanent affordability. Typically, this document is designed as a 99-year renewable lease and contains restrictions on resale price, buyer eligibility, and occupancy. Remedies for violation are also found in the lease agreement. A CLT has the option to the cure in the case of default and in the case of

\textsuperscript{35} Davis, \textit{Shared Equity Homeownership}, 31. \\
\textsuperscript{36} Ibid., 79 \\
\textsuperscript{37} See note 28 above; Ibid. \\
\textsuperscript{38} Davis, \textit{Shared Equity Homeownership}, 87.
foreclosure the CLT retains the first right to repurchase the home. The lease allows the
CLT to collect a monthly fee and conduct periodic inspections of the property. If
violations occur the CLT may use a summary process to enforce the lease.\(^\text{39}\) If there are
instances of serious and repeated default, the CLT may evict the homeowner, repurchase
the home, and find a new owner. LECs use proprietary leases to regulate use of property;
however, other documents contain the restrictions on resale. In fact, resale restrictions
can be found in three different articles. These include the bylaws of the corporation, the
stock certificates, and provisions of the subscription agreement. Violations of the
proprietary lease are punishable by monetary penalties and other sanctions and may even
include eviction. Violations of resale restrictions do not occur often because, in addition
to setting the price and approving occupants, LECs usually repurchase shares whenever
an apartment is sold. However, if a member attempts to bypass restrictions the LEC has
the ability to block the transfer of the home.\(^\text{40}\)

**Controls to prevent foreclosure**

Several controls exist to prevent foreclosure or loss of homes from a sponsor of
shared equity housing. Often, a sponsor will require that their approval is met before a
mortgage or lien is placed on a property. This protects buyers from predatory lending and
deals that give less credence to the sponsor’s authority to regulate use and resale of the
home. If a sponsor does not have absolute authority to review a mortgage then it must
consent to any agreement that meets the use and resale conditions found in the ground

\(^{39}\) See note 28 above.

\(^{40}\) Davis, *Shared Equity Homeownership*, 87.
lease, covenant, or proprietary lease. A notice of default is often incorporated into a mortgage and involves a contractual obligation for the owner to notify the sponsor of mortgage difficulties in a timely fashion. The notice of default may contain provisions requiring the sponsor to notify the lender if the owner is struggling, and the lender to notify the sponsor if an owner has failed to make payments or is already in default. It is quite common for the lender to be required to notify the sponsor if an owner is over 60 days delinquent on payments.\textsuperscript{41} If the owner has defaulted the sponsor often has the opportunity to cure. The sponsor is given a period of time, often between 30 and 90 days after the date of notice, to cure the default on behalf of the owner. If a foreclosure occurs the sponsor may purchase the property from the lender. This price may be based on an appraisal of the property’s market value or be equal to the outstanding balance on the mortgage plus any costs the lender may have incurred in performing the foreclosure. If the sponsor is a CLT, it may retain ownership of the land even if the building is lost. In this case the CLT is no longer bound by provisions of the ground lease and may charge full market rent for use of the land (or an even higher fee). The ability to retain control of the land provides the CLT with an important bargaining chip. If the lender sells to a buyer who would have previously been ineligible, the CLT may cut a deal where resale controls are reinstated for a smaller monthly lease fee.\textsuperscript{42}

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\textsuperscript{41} Ibid., 79
\textsuperscript{42} Ibid., 80
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Types of Resale Formulas

There are four types of resale formulas used to preserve the affordability of shared equity housing: mortgage based, index based, itemized, and appraisal based. With a mortgage based formula, the resale price is adjusted to reflect the amount of mortgage financing a buyer with a particular income will be able to afford at the interest rate of the time of purchase. The seller has no control over the variables involved. High interest rates in particular may negatively impact a seller’s return. In contrast to other resale formulas mortgage-based formulas do not create a resale price that refers to the property’s appreciation or the seller’s investment. The focus is essentially on the home’s future affordability. Mortgage-based formulas preserve affordability regardless of circumstances, but there is no consideration given to ensuring a fair return for the seller. Because of this, sellers may be tempted to withhold sale until interest rates drop. Mortgage lenders in particular may not like this formula because a resale during a low interest period could result in a price lower than the total amount still owed on the mortgage.43

There are several questions that must be answered when building a mortgage-based formula. First, what is the percentage of AMI of the eligible target group and what kind of monthly carrying costs will they pay? Monthly carrying costs typically include principal, interest, taxes, insurance, and association fees (if necessary).44 The next

44 Davis, Shared Equity Homeownership, 84.
question is what percentage of the homeowner’s income will go towards paying these costs? Usually, this is 30 percent or 35 percent of the homeowner’s income. A final question is how much of the initial purchase price will be covered by mortgage financing and what type of mortgage will be used? In most cases mortgage financing covers 95 percent of the purchase price and monthly costs are calculated for a 30-year fixed rate mortgage.45

Index formulas use a single variable to establish a sale price. The formula may be based on changes in income in the service area or changes in the costs of living. Index formulas are not often used by CLTs, but are regularly used by public affordable housing programs. Under an index formula credits may be given for improvements made by the owner. But, aside from credits there is little incentive to conduct repairs or improvements because the index does not consider these factors. A rise in the area’s median income will generate more equity on resale but may also price some buyers out of the market. In addition, short-term owners who have not paid extensive mortgage debts may receive the same level of return as those who have. This may also encourage shorter terms of occupancy. A higher turnover rate is not healthy for a neighborhood because it can create a sense of instability.46

“Every indexed formula has essentially the same form: purchase price + [purchase price x percentage change in index] = resale price”. There are two essential questions that must be answered when creating an index formula: “How will the initial price be established?” and “What index should be used?” When deferred loans and grants are

45 Ibid., 85
46 See note 43 above.
awarded to a homebuyer the subsidies must be included in the purchase price of the home. The home, in essence, is selling for a market-rate price, but is made affordable through the addition of resources. In other circumstances the sponsor must decide whether the formula will apply to the full market price or the market price minus the subsidy. The decision is important because when the full price is used it stands to create a windfall gain for the initial owner but makes the home much less affordable to the next buyer.\footnote{Davis, Shared Equity Homeownership, 82.}

There are two types of indexes that may be used, those based on income and those based on costs. The most commonly used income index is the percentage of change in the AMI. AMI is useful because it is a familiar tool and is specific to a particular location. However, some advocates disagree with its use because in certain circumstances the geography itself can create skewed results. For example, some low-income buyers who inhabit a depressed inner-city neighborhood may actually be able to afford a CLT home, but the overwhelming poverty will skew the results and give the impression that no one in the neighborhood is actually wealthy enough to afford a home of any kind. By the same token a depressed neighborhood on the edge of a city surrounded by wealthy suburbs may be given the impression of having more money for housing then is actually available. Several alternatives to AMI have been used. Some have elected to use an index of blue-collar wages; others have referred to changes in the level of welfare...
payments. Still, others have chosen to track the salaries of “key workers” such as firefighters, school teachers, and nurses.\textsuperscript{48}

The most commonly used cost index is the Consumer Price Index (CPI). The CPI gives a measure of inflation and traces the prices of a specified basket of consumer goods and services. Sometimes, when a sponsor incorporates CPI into a formula only the housing component will be used. Other sponsors instead of using CPI will create an index by referring to their local Multiple Listing Service which provides information on the sale prices of existing homes. Instead of relying solely on a single income or cost index some sponsors will create a new index out of the combination of the two. For example, a regional coalition in King County, Washington has created an index formula by combining the percentage increase in AMI with the percentage increase in the average selling price of houses and condos in the county.\textsuperscript{49}

Itemized formulas adjust the resale price by adding or subtracting factors that have an effect on the value of the owner’s investment. Some common factors are inflation adjustments, improvement credits, depreciation deductions resulting from lack of maintenance, and penalties for atypical damage. Inflation adjustments protect the owner’s investment in the home and prevent those who have not made investments from gaining an undeserved advantage. These adjustments can be made from year to year. One disadvantage of this formula is that inflation adjustments (although fair) may cause resale prices to raise beyond the reach of lower-income households. Another disadvantage is that accounting for too many improvements may make a home too

\textsuperscript{48} Ibid
\textsuperscript{49} Ibid
expensive as well. Sponsors may dislike this formula because when using depreciation as a factor, specific characteristics of a house must have their own depreciation schedule that must be monitored and recorded. With all the record keeping and complicated calculations that are required, itemized formulas can place great demands on staff time.  

Adjustments for inflation make itemized formulas similar to indexed ones. When adjusting for inflation, typically CPI is used although some use AMI. Instead of using an index, some sponsors simply choose to use a fixed-rate inflation factor. A fixed-rate inflation factor increases the value of a homeowner’s equity by a fixed percentage each year, such as 2 percent, 3 percent, or 5 percent. No matter which inflation factor is chosen, the factor is not applied to the purchase price of the home but rather to the accumulated equity. This equity includes the downpayment, the retired principal on the mortgage, and the value of capital improvements credited to the owner’s account.

With appraisal-based formulas the appraised value at the time of purchase and the appraised value at the time of resale are examined and a percentage of the increase in value (often 25 percent) is returned to the seller. The appraisal applies only to the building and not the land. Certain sponsors may use a system where residents who occupy their homes longer are awarded larger percentages of the increase in value. Some sponsors may find the formula less burdensome on staff because there is no need to distinguish between repairs or improvements and it is not necessary to evaluate wear on the home. By the same token the formula can be a disadvantage because poor maintenance may not be figured into the appraised market value. Furthermore, equity

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50 See note 43 above.
51 Davis, Shared Equity Homeownership, 83.
cannot be calculated from year to year and rapidly appreciating real estate markets may price homes out of the range of low-income buyers.\textsuperscript{52}

Some appraisal-based formulas contain a variation where credits are given to owners who make capital improvements at their own expense. Another variation asserts that the owner’s share of property appreciation should be proportionate to the size of his or her initial investment in the property. Under this formula, those who make a larger initial investment will receive more upon resale of the property. This type of formula is usually only applied in situations where large public or private subsidies have been used to reduce the price of the home. Using this formula the purchase price is divided by the appraised value to give a percentage of appreciated value the owner is allowed to receive. This percentage is then multiplied by the appreciated value and the product is added to the initial purchase price to create a resale price for the home. Say for example there is an owner who pays $60,000 for a $120,000 home. Five years later the home appreciates by $20,000 and is now worth $140,000. The owner is allowed to collect 50 percent of the appreciated value ($60,000/$120,000 = 0.5). This means the owner is allowed to collect $10,000 of the $20,000 in appreciation (.5 x $20,000 = $10,000). When this product is added to the initial purchase price the owner is allowed to re-sell the home for $70,000 ($60,000 + $10,000 = $70,000).\textsuperscript{53}

\textsuperscript{52} See note 43 above.
\textsuperscript{53} Davis, \textit{Shared Equity Homeownership}, 84.
Property Taxes

When it comes to establishing property taxes for a CLT (or any other shared equity model) there are several methods that may be used. The exact methods used vary from area to area.\textsuperscript{54} The first method which is commonly applied is to simply tax land and buildings at full-market value. Many assessors do not consider the encumbrances placed on shared equity housing such as subletting, resale, and use which limit a property’s ability to generate a profit. In these instances owners are being taxed on values they can never claim. This can be particularly harmful to the expansion of shared equity housing in those areas where property taxes keep a steady pace with the rate of appreciation.\textsuperscript{55} Despite the common practice of taxing shared equity homes at full market value, some alternative methods can and are being practiced.

When establishing these methods, there are essentially two questions an assessor must ask. The first is: “In light of restrictions, what should be the initial assessed value of the property?”\textsuperscript{56} The second is: “At what rate should this value increase over time?”\textsuperscript{57} In answering the first question, assessors often consider what the particular restrictions are within the contractual documents and whether or not they are amenable or revocable. If the resale formula on a home has a very shallow limitation on equity then an assessor is

\textsuperscript{55} Davis, Shared Equity Homeownership, 101.
\textsuperscript{56} Ibid
\textsuperscript{57} Ibid., 102
less likely to record the property at a lower value.\footnote{Ibid., 103} The same can be said for a home whose restrictions may be amended or revoked at any time. Another consideration is how long the controls will last. Restrictions that last for 10, 20, or even 30 years, are far less likely to have a lower assessed value. Typically, CLTs make use of a 99-year ground lease so this consideration is not likely to affect them.\footnote{Ibid., 102} However, other shared equity models may use deed covenants or a subordinate mortgage which impose controls that do not last nearly as long. Assessors use several methods to establish the tax rate for shared equity homes. Some assessors will look at sales records of comparable shared equity homes. Others will consider what the home would sell at according to the resale formula and adjust the value accordingly. Still others will choose a rate of appreciation that is a certain percentage lower than the rate for market-rate homes.\footnote{Ibid., 103} Some jurisdictions place a cap on the rate. In Oregon land and buildings for CLTs are assessed at 75 percent of the purchase price and property taxes cannot increase by more than 3 percent annually.\footnote{See note 54 above.}

It is worth noting that values for land and buildings must be considered separately when assessing shared equity properties. The aforementioned methods apply mainly to buildings. Although it is the CLT who pays taxes on land these expenses are passed on to residents often as part of the monthly ground lease fee. Therefore, land taxes must be considered alongside building taxes when evaluating the affordability of a home. The assessed value of the land should never be higher than the “leased fee value” of land. Leased fee value is the “economic value that is retained by the landowner” and is
“essentially the net present value (NPV) of the income stream which the CLT can collect from a parcel of land in monthly fees over the term of the lease, plus the discounted value of any proceeds the CLT might realize when the land reverts to the CLT at the end of the lease.” In most instances we can safely assume that a CLT resident will not be taxed beyond measure for the land he or she occupies. CLTs often issue lease fees that are well below the land’s fair rental value. Sometimes these lease fees are only a few dollars per month. In addition, because homes are re-leased according to other low-income buyers at an affordable price the land typically generates no reversionary value. Assessors in various parts of the country have assessed CLT land using different method. In Albuquerque the assessor resolved that the Sawmill CLT had no taxable value at all. The OPAL CLT on Orcas Island in Washington State has its land assessed at 40 percent below market value. In New Hampshire, assessors tax CLT land according to its highest-and-best use and this has slowed development of community land trusts throughout the state. The CLT advocates in New Hampshire share the burden of affordable housing advocates everywhere. Often, affordable housing projects are not politically popular and often raise a host of NIMBY issues. Advocates of CLTs are often satisfied to see their projects launched and do not want to trouble the waters by pushing for lower property taxes in a resistant political climate.62

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62 Davis, Shared Equity Homeownership, 96.
Conclusion

Regardless of which shared equity model, the chief goal is always to preserve affordability. Households who attempt to become homeowners without assistance tend to face difficulties and often find themselves renting once again. This is tragic because homeownership provides many benefits such as a sense of security, the ability to accumulate wealth as well as establish social capital. Neighborhoods benefit as well. It has been shown that neighborhoods with greater social capital have lower rates of crime and unemployment. Shared equity models use subsidies to help low-income households become homeowners while preserving the same subsidies for future use.

There are essentially three models of shared equity and each has their unique application. The model that is growing the most quickly in use is the deed-restricted model. While this model can be effective, it must be remembered that covenants whether due to a statute or an arbitrarily conceived limit face restrictions on how long they may last. Furthermore, an entity must be charged with enforcing the rules. Housing cooperatives are unique in that households never actually own homes but rather own shares in the corporation. Aside from this characteristic, limited equity housing cooperatives are fairly similar to CLTs. A key difference is that while LECs limit governance to shareholders the CLT model makes membership available to the community and allows (and requires) nonlessees to serve on the board of directors. This characteristic encourages greater civic engagement which itself is a form of social capital. On the other hand some see the internal control of shareholders under the LEC model as a threat to preserving affordability in rapidly appreciating markets. Another key difference
is that the CLT makes use of a 99-year ground lease while the LEC model has no use for such a document because the corporation collectively owns the land and buildings.

In addition, to these models there are several mechanisms that may be used to preserve affordability. The use of a secondary mortgage to preserve affordability appears to be unconventional since it is not used with any of the three major models. Use of a secondary mortgage is not useful for preserving affordability for various reasons such as its ability to be paid off, its subordination to a primary mortgage, and its limited duration. Deed covenants which are inherently attached to the deed restriction model suffer from the same disadvantages. They must be enforced by an outside entity and, like the secondary mortgage, they are of limited duration. Both CLTs and LECs use various documents as mechanisms for preserving affordability. For CLTs the resale restrictions are attached to the ground lease; for LECs the restrictions are tied to three different documents (bylaws, stock certificates, and subscription agreements).

Each mechanism will use some sort of resale formula to preserve affordability. The mortgage-based formula is effective at preserving affordability but is sensitive to circumstances outside the seller’s control which may work to his or her advantage or disadvantage. High interest rates will lower the return on a seller’s investment and vice versa. This formula also gambles with neighborhood stability as owners may sell very early or in contrast sell at much later time period. In addition, lenders dislike the risk of an owner earning less on a resale than what is still owed on the mortgage. Like mortgage-based formulas, index formulas are subject to circumstances that are outside the seller’s control. The seller will never lose out, but in situations where he or she stands
to gain a windfall he or she may sell early once again jeopardizing neighborhood stability. Furthermore, in areas experience a rapidly increasing index (such as a skyrocketing AMI) lower-income households may be priced out of the market. Perhaps the most specific formula is the itemized formula which uses a number of factors to arrive at a resale price. This formula pays particularly close attention to an owner’s influence on his or her property. Improvements create credits while lack of maintenance and damage results in depreciation. While this formula is very just, it requires close monitoring, places a burden on staff, and may give leaseholders the impression that their privacy is being violated. A formula commonly used by CLTs is the appraisal-based formula. With this formula the seller simply pockets a particular percentage of the resale equity. Staff are not burdened but at the same time specific factors such as poor care of the home will not figured into the total. Furthermore, in spite of limiting equity to a percentage of appreciation, areas experience rapid appreciation can price low-income households out of the market when using this formula.

Every shared equity sponsor will have to resolve how to deal with property taxation. The two matters that must be resolved are what the initial assessed value should be and at what rate taxes should increase over time. Assessors in some parts of the country have been gracious enough to limit the property tax burden on limited equity homes while others have not.
CHAPTER 5-DEVELOPMENT AND MARKETING

Introduction

This chapter deals with development and marketing and specifically focuses on CLTs. The process of making improvements on CLT land often involves construction, acquisition, and rehabilitation of buildings. There are several ways that these activities can be initiated. These include CLT initiated development, buyer-initiated acquisition, partnership projects, municipally-initiated projects, and PHA-divested property.¹

In addition, this chapter describes what factors to consider when developing a marketing strategy including targeting, advertising, and educating potential homebuyers. The chapter ends by discussing the criteria and process of selecting homebuyers.

Initiation of Development on CLT Land

When the CLT itself initiates development, it hires staff and contractors through an RFP process. The CLT supervises the development, and improvements remain under its ownership until construction is complete. Once construction is completed the improvements may be sold to individual buyers, nonprofit or for-profit corporations, or commercial investors. Most CLTs are active in the development process and participate in planning projects, packaging financing, preparing pro formas, hiring builders and architects, and overseeing actual construction.²

With buyer-initiated acquisition, classes and orientations are held to educate homebuyers about the ground lease’s provisions and restrictions. Eligible homebuyers

² Ibid
are pre-qualified for grants and other assistance and those who are creditworthy are pre-qualified for the largest mortgage available to them through a lender. The homebuyer looks for a home that meets their specific needs and is appropriate to guidelines for location, condition, size, and price prescribed by the CLT. At closing the land and building are purchased by the CLT and resold to the homebuyer. The CLT executes the ground lease with the homebuyer and transfers the right to use the land beneath the building.3

In some communities CLTs have chosen not to be developers at all but instead focus on stewardship duties such as acquiring and leasing land, and preserving the affordability of buildings. A nonprofit organization will instead fill the role of developer. Often this is the same organization that sponsored the creation of the CLT. These are known as partnership projects. The CLT will use investment criteria to set priorities for certain neighborhoods and projects and the nonprofit organization will provide advice on development. If it is the developer who approaches the CLT with a proposal the developer will usually assume the risk associated with the project.4

Under a municipally-initiated project a city transfers land to a CLT for development of particular projects. These projects usually center on creating affordable housing. Sometimes municipalities will use density bonus, inclusionary zoning, and housing replacement ordinances to place land and buildings under the control of CLTs.

3 Ibid
4 Ibid
At other times a PHA may want to relinquish land suitable for development and provide it to a CLT to create permanently affordable housing.\(^5\)

These different methods of development raise different issues. Organizers, funders, and sponsors will need to answer different questions depending on what development strategy takes place. Does the CLT have the in-house capacity to oversee constructions? Is there a marketing plan in place before or during construction? With buyer-initiated acquisition the CLT must find out whether or not public funders will provide enough subsidies to purchase land. They must determine whether lenders are willing to pre-qualify buyers before identifying a specific home and if potential buyers will be able to pick among several neighborhoods or just a specific one. The CLT must decide what measurements of price, size, condition, and type of housing will be created for its buyer-initiated program. In addition, the CLT must determine what its role is in inspecting, rehabilitating, or repairing the buyer-selected homes. Developer initiated projects require the CLT to evaluate the projects suggested by outside developers and to determine what kind of development agreement will serve its and the leaseholder’s best interest. With other partnership projects the CLT must question where capital will come from to pay for its role in acquiring land. If the CLT chooses not to develop it must determine how it will take ownership of operations. The CLT must also decide what criteria will be used in choosing land and parcels. If the CLT conducts land banking it must answer how it will pay the costs of maintaining the land. The CLT must ask what kind of multi-year contract will exist between it and its partners and how the roles and

\(^5\) Ibid
responsibilities of each will be defined. Municipally-initiated projects require the CLT to consider what level of staffing is necessary for the CLT to function effectively. The CLT must also ask whether they should be charged with guaranteeing the affordability of condos that are subsidized, developed, or acquired by the city if the condos do not reside on land leased by the CLT. For PHA-divested properties the CLT must determine if rental units previously held by the PHA should remain rentals or be converted to ownership units. The PHA must decide whether it should transfer land to the CLT at a market-rate or below-market rate price, or if it should be given for free.6

**Marketing CLTs**

Before a sponsor sets out to market CLT homes it must consider many factors such as target group, eligibility, advertising, and what to discuss at orientations. When selecting a target group a CLT should be as specific as possible. Simply choosing families that cannot afford market-rate homes and those at a certain median income is not accurate enough. It is good to consider how a certain family size and age level of children will fit a certain unit based on size, location, and number of bedrooms. It is also important to consider the minimum income necessary to afford a unit and the maximum income allowed. Downpayment, closing costs, and creditworthiness should be accounted for. The CLT must decide what kind of profile fits a housing unit based on occupation. For example, the CLT might want to use its homes to house school teachers, police officers, or carpenters. An advertising strategy is important. There is a high level of need

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6 Ibid
and desire for CLT homes but simply building these units will not necessarily draw buyers. It is not safe to assume the target is already looking for a home. In fact, it may be more efficient to place your ad in the rental or garage sale section of a newspaper rather than the homes for sale section. Certain locales may serve as effective areas for attracting targets. For example, some CLTs post ads at supermarkets, daycare centers, big box stores, and Laundromats. It is necessary to attract a large enough number of people to find just the right clients. Among those interested, many will fall short of being qualified because either they have too little income, are not creditworthy, or do not qualify for a subsidy or a mortgage. It is important when marketing CLTs to establish a link between selling units and educating potential lessees/homebuyers. People may have a difficult time understanding the CLT model on their own. At orientation sessions it is better to focus on explaining the CLT model rather than elaborating on the history of the organization and the background of staff members. It can be helpful to include descriptions and photos of homes for sale including amenities, location, and price. It is most effective to talk about the homes first and follow with a very careful explanation of the CLT model especially the limited equity component. When discussing price it is more effective to speak in terms of monthly cost rather than the full sale purchase price. This is because it is often easier for many individuals to comprehend monthly costs as opposed to the full sale price of a home. Once a sufficient pool of buyers have been acquired it is helpful to begin a waiting list. Once this list is created the sponsor must keep those listed informed and updated on their status in order to maintain their interest. Employers might be interested in providing assistance in marketing homes because the
housing could potentially foster economic development and job retention. Visiting a local Chamber of Commerce is sometimes a good place to start. Marketing professionals may be willing to provide assistance to CLTs at a reduced rate or even do pro bono work.7

**Homebuyer Selection**

The first step for a CLT in homebuyer selection is establishing what its goals are. For many CLTs goals are likely to be providing housing opportunities for low and moderate income buyers as well as preserving the quality and existence of affordable housing. There are two measurements that a CLT may use in making a selection: threshold criteria and secondary criteria. Threshold criteria are used to evaluate a number of characteristics such as income, citizenship, creditworthiness, and assets. Careful consideration must be given to whether a household is too poor and cannot afford a CLT home, or, if to the contrary they are too wealthy and should not be eligible. Sometimes, this issue can be resolved by multiplying monthly household income by the debt-to-income ratio. Generally, housing that does not surpass 28 percent to 36 percent of monthly household income is considered affordable. Assets are evaluated as well to ensure that individuals’ net worth is not being understated. This requires a careful review of assets to determine whether or not a household can compete in the local conventional housing market without assistance. In addition, potential buyers must often undergo an application process to become pre-qualified for mortgage financing. This process

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determines whether or not a household is likely to qualify for mortgage based on the specific requirements of mortgage programs. Usually, if a cosigner is needed to meet requirements the household will not be eligible.\(^8\)

In addition to primary threshold criteria already mentioned, it is also good to create lower priority secondary criteria. These criteria are referred to when a choice must be made among two or more households that meet the threshold criteria. These secondary criteria evaluate residency, community involvement, if a member of the household is an heir to one of the homes, level of need, how long an application has been on file, whether household is a first-time homebuyer, CLT membership, the relevance of the household size to the unit size, and who applied first. When evaluating residency the selection committee looks at how specific the potential household’s residency is to the locale. More specifically the committee looks at whether the household is a resident of the state, the county, or the community. Community involvement is measured by looking at the household’s level of participation in community organizations, churches, or nonprofit groups. In regard to heirs, a committee may sometimes give priority to individuals who are heirs of former owners of housing within the CLT. With need, committees sometimes give special consideration to lower income households, especially those who have children or are threatened with displacement. The committee may also give priority to individuals simply because they have been on file longer and are due to have their chance at buying. Sometimes favor is shown to a household that has previously been a member

of the current CLT or another CLT. Committees usually esteem involvement in CLT activities and wants to form closer bonds with other CLTs. Committees will sometimes be partial to those who are first-time homebuyers. However, in these instances single parents who owned a home with a former spouse are not considered first-time homebuyers. There is often consideration of whether household size to unit size is relevant. Those who are better matches are more likely to be chosen. Finally, a committee may simply use a first come, first served determination to help them in their decision making.  

The application process for selecting homebuyers contains multiple steps. The following steps for selection are not necessarily sequential. The process usually begins with outreach and marketing followed by an information/orientation session. Before being approved it is often required that the buyer attend at lease one session. Application forms are made available to interested individuals. These forms must be completed and returned to staff. If necessary, staff will provide assistance to applicants who need help filling out the form. Once an application is collected staff will review the form to determine how well the applicant meets threshold and secondary criteria. From there the staff decides if the applicant potentially qualifies for one or more available units or if instead he or she should be placed on a waiting list. At some point staff or a selection committee will interview all households who apply for housing. It is highly encouraged that applicants undergo homebuyer training. Staff will inform applicants about educational sessions held by local lenders. Staff may also require an applicant to attend a

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9 Ibid
pre-qualification session held by a lender to determine eligibility for a mortgage. Preliminary approval or denial will often occur after a household is pre-qualified for a mortgage. The selection committee will conduct reference checks and verifications to aid them in the decision making. Those who attain preliminary approval are placed on the waiting list while those are disapproved receive a formal notice in writing. The staff or selection committee will frequently provide advice to the denied households on how to potentially obtain approval in the future. The number of people on the waiting list who acquire final approval will be influenced by the number of people listed and the number of available housing opportunities. Those who are chosen will sign (along with the CLT) a purchase and sale agreement. The applicant will then apply for mortgage financing, receiving assistance from staff if necessary. Applicants will be directed to schedule for a detailed review of the legal documents involved in the transaction including the land lease. Applicants must acquire at their own expense an attorney to review all the CLT legal documents and provide counsel on their behalf.  

Conclusion

There are many ways of beginning the process of land development for a CLT. Because, different methods require varying degrees of investment in time, labor, and money CLTs will not always have option to choose which rout to follow. It is a huge undertaking for a CLT to initiate development because it must hire staff, contract labor, and supervise development. Buyer–initiated development is not as costly in terms of

\[10\] Ibid
labor and expenses because the CLTs only duties are to arrange financing and education for the buyer, purchase the land and building at closing, execute the ground lease, and convey ownership to the buyer. Sometimes partnerships between a CLT and an existing nonprofit such may be formed to provide shared equity housing. This is an effective method because the two organizations can share the workload and advise each other when conducting specific projects. A city can also serve as a valuable partner to a CLT. A city may help a CLT by donating land, and altering regulations in favor of the CLT. Like cities, sometimes a PHA will donate property to a CTL to create or assume control of affordable housing.

Once property is acquired CLTs need to establish a marketing strategy for selling their homes. The first step is to determine the target. The CLT will need to consider characteristics such as family size, necessary income, and profile of their target. After defining a target group the CLT needs to employ an advertising strategy. It is often effective to use less conventional methods such as placing ads in the rental section of a paper as well as posting them in areas such supermarkets and daycare centers. When interested individuals are being educated it is important to showcase the homes and carefully explain the shared equity component of the model. Buyers themselves will be selected threshold, and, if necessary, secondary criteria. These criteria must be tailored to ensure the buyers that most closely fit the target are selected.
CHAPTER 6 - FUNDING

Introduction

There are many potential avenues to obtain funding and financing for a CLT. Housing trust funds, land donations, pension funds, private foundations, and development fees can all be used for this purpose. Some sources such as ICE’s Revolving Loan Fund, the HOME Program, Fannie Mae’s CLT Option, Federal Home Loan Bank grants, and community development block grants merit further explanation in their application to CLTs and are discussed below.¹

ICE’s Revolving Loan Fund

ICE created its Revolving Loan Fund (RLF) in 1979. Since that time ICE has provided 445 loans to CLTs in 30 states. These loans which have totaled more than $44 million have contributed to the development of more than 4,500 housing units. Loans are typically awarded to CLTs, LECs, and community-based nonprofit organizations who are seeking to provide permanently affordable housing to low-income people. These loans are often used for land and/or housing acquisition, construction, rehabilitation, or acquisition of office space for nonprofit use.² Depending on the type of loan, interest rates range from 6 percent to 9 percent. There are no application fees and closing fees equal 1 percent to 2 percent of the amount of the loan. The collateral necessary to secure

these loans may take several forms. A first deed of trust or a first mortgage lien is used to secure the loan in most instances. If a first deed of trust is used the title to the property will be held by ICE until the loan is paid off. If a default occurs under a first mortgage lien ICE must be repaid from the sale of the property prior to any other lender. For bridge loans a receivable source of repayment must be identified in case of default.³

There are several types of loans that ICE offers. These include construction, mini-permanent, permanent mortgage, bridge, facilities, and line of credit loans. These loans are generally used to finance projects that place an emphasis on creating permanently affordable housing. With construction (or rehabilitation) loans there is no maximum or minimum limit on the amount that may be borrowed. Interest must be paid monthly and the principal must be paid following the completion or sale of homes. Mini-permanent (or balloon) loans have a limit of $500,000 and a term of 3 to 5 years with a 10 to 30 year amortization period. Permanent mortgage loans provide up to $100,000 per loan policy. These loans are fully amortizing and have a 30-year maximum limit. Bridge loans apply to projects backed by some form of security, for example, real estate or a committed source of capital from an organization (such as a grant or contract payment). Up to $250,000 may be provided for loans backed by real estate and up to $100,000 may be provided for loans backed by a receivable source of capital. A bridge loan must be a minimum of $5000 and will last from 6 to 12 months depending on the projected receivable payment. Facilities loans are used for the construction or permanent financing

of facilities. A maximum of $100,000 may be loaned per policy. The terms of a facilities loan may be similar to a construction or mini-permanent loan. Line of credit loans can be used for acquisition, pre-development, construction, or working capital. Up to $10,000 may be loaned per policy. Interest rates range from 6 percent to 9 percent and are fixed. There are no application fees, but there is a closing fee of 1 percent per year if the policy is renewed. A line of credit loan may use public or private contracts, committed grants, project-related subsidies, developer fees, or first or second mortgages as collateral. Line of credit loans allow for 90 percent to 100 percent loan to value ratio in addition to closing costs and 100 percent of committed subsidies depending on the conditions of the loan agreement. The loan lasts for 12 months and is renewable at ICE’s discretion.4

The HOME Program and Community Land Trusts

The Housing and Community Development Act of 1992 made it possible for CLTs to become eligible for HOME funds by incorporating them as Community Housing and Development Corporations (CHDOs). CHDOs are entitled to 15 percent of a participating jurisdiction’s (PJ’s) allocation of home funds. In addition to the benefits applied to CHDOs, CLTs may qualify to receive HOME funds for administrative or technical assistance, organizational support, and operating assistance. HOME also allows intermediaries who work with PJs or PJ-designated nonprofit organizations to use funds to establish new CLTs. To be considered a CLT for purposes of the HOME program an organization must meet the definitions found in 92.302(c)(6). The role of a CLT as

4 Ibid
CHDO within the HOME program is essentially that of a community-based nonprofit
developer of affordable housing. The CLT acting in this role carries out various activities.
The CLT administers a continuous acquisition and development program. The CLT
conveys land to individuals, cooperatives, and other entities. The CLT promotes resident
ownership and management of housing as well as the preservation of neighborhood
businesses and social services. The CLT works in cooperation with other nonprofit
organizations to provide affordable housing opportunities. Sometimes a CLT works with
a local government to meet needs in return for financial assistance. The CLT may play a
critical part in creating its PJ’s first-time homebuyer programs financed by HOME
funds.⁵

To maintain permanent affordability the CLT creates resale restrictions (as
according to Section 215(b) of the Housing and Community Development Act of 1992)
that detail the criteria that must be met when resale of a HOME-funded property occurs.
These restrictions essentially require that the owner receives a fair return on investment
and that the housing will remain affordable to a number of low-income homebuyers. If
these previous provisions are not met then the HOME subsidy must be recaptured so that
other persons may receive the benefit from it. No recapture is necessary, however, if
there are no net proceeds or if the proceeds are too limited to repay the full amount of
assistance.

There are many other requirements and restrictions that must be remembered when applying for or expending HOME funds. Unlike other nonprofits, CLTs do not need to prove that they have a history and capacity for carrying out HOME activities within their targeted community and 20 percent of the 15 percent of set-aside funds can be used to build capacity for a young CLT. However, this particular amount is limited to $150,000 and must be committed within 24 months of the PJ receiving its first allocation.\(^6\) While CLTs may qualify as a CHDOs, board and other requirements must be met.\(^7\) For example, one-third of a CLT’s board must be “residents of low-income neighborhoods, other low-income community residents, or elected representatives of low income neighborhood organizations.”\(^8\) CHDO set-aside funds may be used for costs associated with feasibility studies, consulting fees, preliminary financial applications, site control and title clearance, hiring a development team, legal fees, architectural fees, and engineering fees. Up to 5 percent of a PJ’s allocated funds may be expended on operational expenses. Acquiring and holding title to land is unlikely to qualify as a CHDO activity if someone else owns and develops the improvements. Funds may only be used purchase land for housing that meets HOME’S requirements. Funds should not be spent on land acquisitions unless there are imminent plans for creating eligible low-income housing. Land must be used for low-income housing. Funds cannot be used to compensate a PJ for property that it owns or to conduct land banking. Donated or

\(^6\) Ibid
discounted land is considered a matching fund under 92.220(a)(2) of the HOME Final Rule. A ground lease may be used to enforce occupancy and affordability restrictions if the use of land trust housing is part of a PJ’s consolidated plan and HUD has approved it as an allowable form of homeownership. If a property is over the HOME limit of 95 percent of median value as according to 92.254(a)(2) it will not be eligible for HOME funds reserved for owner-occupied rehabilitation or homebuyer assistance. If a project fails HOME funds used for acquisition must be repaid.⁹

**Fannie Mae Community Land Trust Option**

Fannie Mae states in Part VIII of their Selling Guide the following in regard to securing mortgages for housing located on community land trusts which they will purchase:

“We will purchase a first mortgage secured by a leasehold estate on property held by a community land trust as long as: the mortgage is one of our community lending products, the lender has been specifically approved to use this option, the borrower satisfies any income limitations we have for the first mortgage product (as well as all applicable community lending underwriting guidelines); the mortgage satisfies our other community lending mortgage eligibility criteria discussed in Chapter 1 [of the Selling Guide], the mortgage satisfies any applicable eligibility criteria discussed in Part VII, Chapter 1; and

⁹ See note 5 above.
the property is acceptable as security for the mortgage (as discussed in Part XI, Section 312).”

Part XI, Section 312, of the Selling Guide titled “Leaseholds and Community Land Trusts” deals specifically with how appraisals should be made. Fannie Mae requires the appraiser to use a three-step process to arrive at an opinion of value. The first step is to establish a fee simple value by looking at sales of comparable properties. The second step is to determine the capitalization rate by examining sales of fee simple ownership properties and sales of comparable non-CLT properties, fee simple properties and properties under a ground lease. The appraiser arrives at the capitalization rate by dividing the non-CLT ground rent by the difference in sales price of the fee simple properties and leasehold properties. The third step is to determine the leasehold value. The appraiser begins by dividing the annual ground rent by the capitalization rate to get the leased fee value. He or she then subtracts the leased fee value from the estimated fee simple value to determine the property’s leasehold value. This leasehold value is the appraiser’s final opinion of value. Fannie Mae provides the following example for illustrative purposes:

• Annual rent due the CLT ground lease: $300
• The market divided capitalization rate: 5.75 percent
• $300 divided by 5.75 percent equals $5,217.39 ($5,200 rounded)

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• If the fee simple property value were $100,000; the indicated leasehold value of the property would be $100,000 minus $5,200 or $94,800. The final opinion of value reported is $94,800.

In addition to the aforementioned criteria, Fannie Mae requires the lender to show that land trusts “are an accepted form of land ownership in the local market” by establishing the existence of comparable land trusts already in the area. The land trust must also have “at least two years experience in successfully developing and managing affordable housing.” The terms of the ground lease must surpass 10 years beyond the maturity date of the mortgage and the estate must constitute real property under local law. Fannie Mae and ICE have created a ground lease rider. If this rider is used Fannie Mae will not need to review or approve the ground lease. The lender must also be able to show that there are no outstanding lease fees, payments, or assessments on the estate. The borrower must also not be in default.11

**Federal Home Loan Bank Affordable Housing Program**

The Federal Home Loan Bank (FHLB) offers competitive grants twice a year through its Affordable Housing Program (AHP) to member financial institutions who invest in low- or moderate-income housing projects. These projects involve partnerships between the member bank, developers, and community organizations who are seeking to finance the purchase, rehabilitation, or construction of affordable housing. These grants may also be used to reduce the interest rates on loans, to pay off downpayment and

11 Ibid
closing costs, or to cover the cost of homebuyer pre- or post-purchase counseling. Funds may be used in concert with other sources to allow more flexibility in accomplishing a project. Grant monies can be used develop housing with incomes at 80 percent or below AMI. Development of rental housing may be funded if at least 20 percent of the units serve households at 50 percent or below AMI. It must be remembered that funding is only awarded to financial institutions who are members of the FHL Bank System and who are working with a community organization. Therefore, community organizations and member banks must coordinate with each other when applying for grants and proposing projects.\textsuperscript{12} Because they increase access to low-income ownership housing, and have the ability to ensure long-term affordability, CLTs are a strong contender in the competition to win these grants.\textsuperscript{13}

**Community Development Block Grant**

Community Development Block Grants (CDBG) may be used to construct, rehabilitate, or repair affordable housing. CLTs who are awarded a CDBG must usually adhere to a performance contract where they are required to create a specific number of housing units or provide certain array of housing services before the end of the fiscal year.\textsuperscript{14}

\begin{itemize}
\item \textsuperscript{14} Ibid
\end{itemize}
Conclusion

This chapter explained some of the details surrounding several funding sources available to CLTs. The loans available through ICE’s Revolving Loan Fund may be used for construction, rehabilitation, and mortgage financing. HOME allows CLTs to become CHDOs making them eligible for funds that can be used for acquisition and development of affordable housing. However, even if a CLT does not acquire status as CHDO it is still eligible for HOME funds used to provide various forms of assistance as well as operational support. To qualify for any HOME funds the a CLT must meet the definition found in 92.302(c)(6) as well as Section 215(b) of the Housing and Community Development Act of 1992. In addition, there are a variety of other requirements that must be adhered to such as board requirements and restrictions on land banking. Fannie Mae will purchase mortgages for CLT homes but their criteria must be met. Furthermore, property must be appraised according to their established method. However, the Fannie CLT Option is not even available to communities that do not already have existing land trusts and CLTs that do exhibit at least two years experience in successfully managing and developing affordable housing. The Federal Home Loan Bank offers biannual grants that may be used for construction, rehabilitation, and acquisition of affordable housing as well as to lower interest rates on loans, pay off closing costs, and cover the expense of homebuyer counseling. However, it must be remembered that the CLT must work with a Federal Home Loan Bank member to plan and coordinate project prior to applying for a grant. Finally, a CLT may acquire community development block grant funding for the purpose of constructing or rehabilitating affordable housing units.
CHAPTER 7-SURVEY RESULTS AND ANALYSIS

Introduction

The City of Tucson was interested in finding out how cities of a similar demographic makeup have fared using the CLT model. This chapter provides such information. The survey results provide substantial information on the efficiency of the CLT model in cities of similar population size, poverty rate, and median home price to Tucson.

The surveyed CLTs hold varying amounts of property. With the exception of Sawmill Community Land Trust, the CLTs did not have information readily available on how many acres of land they held. However, all the CLTs were able to describe how many properties they held. All the CLTs hold land on multiple sites. Colorado Community Land Trust indicated that as of 2008 they will have over 200 occupied homes; consisting of single-family housing and townhomes. Portland Community Land Trust’s properties consist of 71 owner-occupied single-family and townhouse units (each unit on its own lot), 2 owner-occupied duplex units on a single lot, and 2 multifamily rental apartment buildings. Sawmill Community Land Trust holds land on two sites. One is their original 27 acre site and the other is an adjacent 7 acre site that is currently being developed. The types of homes available through Sawmill Community Land Trust are single-family homes, townhomes, and rentals. Sabin Community Development Corporation indicated that they hold around 30 properties consisting of single-family homes and duplexes.
Because, these organizations are under 20 years old, some information was lacking in regard to resale data. Colorado Community Land Trust was formed in 2002\(^1\), Portland Community Land Trust was formed in 1999\(^2\), Sawmill Community Land Trust was formed in 1997\(^3\), and Sabin Community Development Corporation was formed in 1991\(^4\). Despite the youth of these organizations, the results provide an optimistic outlook towards beginning a CLT in Tucson. Table 4 summarizes the results of the questions found in Appendix A.

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Table 4: Results Matrix*

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<tr>
<th>CLT</th>
<th>Q.1</th>
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<th>Q.7</th>
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<th>Q.9</th>
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<td>CCLT</td>
<td>More affordable</td>
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<td>No</td>
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<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Land: 30 percent; Homes: 70 percent</td>
<td>Appraisal-based</td>
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<tr>
<td>PCLT</td>
<td>More affordable</td>
<td>0; 2</td>
<td>Yes; 1 property</td>
<td>3 years</td>
<td>$25,677; $47,550</td>
<td>$20,000</td>
<td>Yes; 1 out of 9</td>
<td>Land: NPV; Homes: Market rate</td>
<td>Appraisal-based</td>
<td>See results in this chapter</td>
<td>See results in this chapter</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SCLT</td>
<td>Same level</td>
<td>0; 0</td>
<td>No</td>
<td>4-6 years</td>
<td>$35,750; $39,125</td>
<td>$10,000-$15,000</td>
<td>Yes; 2 out of 2</td>
<td>Land: Exempt; Homes: Market rate</td>
<td>Appraisal-based</td>
<td>See results in this chapter</td>
<td>See results in this chapter</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>SCDC</td>
<td>Same level</td>
<td>0; 0</td>
<td>No</td>
<td>NA</td>
<td>$33,950 MFI; $67,900 MFI</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Land: Exempt; Homes: Market rate</td>
<td>Appraisal-based</td>
<td>See results in this chapter</td>
</tr>
</tbody>
</table>

Source: Colorado CLT, Portland CLT, Sawmill CLT, and Sabin CDC

*For questions, see Appendix A.
Maintaining Affordability

As Table 4 shows, all the CLTs indicated that homes either became more affordable or remained affordable following resale. Portland CLT indicated that in the past three years, while their homes had remained affordable in comparison to the open market, they had not become more affordable based on income. Portland CLT implied that this was due to the fact that incomes in Portland had decreased in both real and nominal dollars while homes had experienced double digit appreciation. In 2006, the average cost of a home in Portland was $318,000 while the average cost of a Portland CLT home was $125,000.\(^5\)

Occurrence of Foreclosures and Defaults

Table 4 reveals that none of the CLTs experienced any foreclosures and only Portland CLT experienced any defaults. Portland CLT lost only one property and this was not due to foreclosure. As Portland CLT’s representative, Allison Handler, put it, “the homeowner got mixed in with the wrong crowd and the housing became a crack den and prostitution ring…” This no doubt represents an unusual circumstance; unlikely to be experienced by most CLTs.

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**Length of Residency**

Colorado CLT and Sabin CDC could not provide information on how long a household normally resides in a home before reselling. Households reside in a Portland CLT home for 3 years on average and in a Sawmill CLT home for 4 to 6 years. Some measures can be taken to improve length of residency, even if only to a limited extent. For example, Sabin CDC indicated that they require a household to occupy one of their homes for a minimum of 5 years.

**Average Homebuyer Income Compared to Service Area**

The ratio of incomes for the average buyers of these to the AMI for the CLTs’ service areas indicates that the CLTs are doing an effective job of helping those households who are in need of affordable housing. The average incomes of buyers for Portland CLT (54 percent AMI) and Sabin CDC (50 percent median family income) are far below the 80 percent mark. The one exception is Sawmill CLT who despite targeting households at 80 percent AMI have tended to sell to households at approximately 91 percent AMI.

**Average Net Gains from Resale**

Colorado CLT and Sabin CDC, could not provide information on what the average net gains from resale were for their households. Portland CLT related that the average net gains from resale were $20,000 while Sawmill CLT indicated that the average net gains of their households were $10,000-$15,000. Like the previous question,
Colorado CLT and Sabin CDC did not have data on how many of their former homeowners had gone on to purchase market rate homes. As table 4 shows, out of 9 resales only one former Portland CLT homeowner went on to purchase market rate housing. But, this may be due to the fact a Portland CLT home is less than half the price of a market rate home in Portland. Sawmill CLT is a very young organization and has only experienced two resales, but it is good news that both of the households went on to purchase market rate housing.

**Property Taxes**

In regard to property taxation, it appears that land was exempt or taxed at a discount, but homes, for the most part, are taxed at market rate. An exception was Colorado CLT who had homes taxed at 70 percent of market value. Portland CLT were somewhat unusual in that net present value from the income stream of lease fees was used to assess the taxable value of land. Portland CLT provided an example of how this works. Portland CLT collects $40 a month in lease fees. The entire value of the lease is calculated by multiplying first by the 12 months of the year, and second by the 99 years of the lease. The product is then divided by a 4.75 percent cap rate. The following example summarizes this process:

\[
\begin{align*}
$40/\text{month} \times 12 \text{ months} &= $480 \\
$480 \times 99 \text{ years} &= $47,520 \\
$47,520/4.75 \text{ cap rate} &\approx $10,000
\end{align*}
\]
Portland CLT emphasized that this method was quite helpful because most of the properties they own have values ranging from $70,000 to $75,000.

**Resale Formula Used**

Every CLT used an appraisal-based formula. This appears to be standard practice. Sawmill CLT had an appraisal-based formula that increased on a graduated scale. All Sawmill CLT residents receive a standard amount of 25 percent of the resale equity. However, this amount increases by 1 percent after the 15th year of occupancy up to a maximum of 30 percent.6 This serves as an incentive for owners to occupy their homes longer; however, it is questionable how well this works since the average length of occupancy is only 4-6 years.

**Funding and Assistance Received**

It appears that every CLT has received assistance in the form of either grant funding and/or land donations. Portland CLT receives tax-foreclosed land from Multnomah County. In addition, Portland’s urban renew agency, Portland Development Commission, acquires land on behalf of Portland CLT via solicitations for property development. The City of Portland also provides Portland CLT with an annual donation of $85,000 in operating support. Aside from this, Portland CLT receives income from

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developer fees, lease fees, foundation and corporate grants, and donations. Like Portland CLT, Sabin CDC related that they receive land donations from Multnomah County. In addition, Sabin CDC indicated that some downpayment assistance funds for homebuyers are provided by the City of Portland’s Bureau of Housing and Community Development. Sawmill CLT did not indicate that the City of Albuquerque donates land to them, but that they do purchase land from the City at a greatly reduced rate.

**Opinions on Success**

The most optimistic answers were provided in response to Question 11. Every CLT believed it had been successful. Although responses varied, success was defined (in someway) as being able to provide houses for people who would otherwise be shut out of the market and preserving affordability. Colorado CLT emphasized the importance of enabling people to live in neighborhoods of their choosing as well as closer to their place of work. Colorado CLT was also pleased that some would-be renters were able to achieve status as homeowners.

Portland CLT related that they were pleased with the success they had achieved, but that their contribution to the entire affordable housing need in Portland equated to little more than a drop in the bucket. They mentioned that their ability to provide affordable homes is largely contingent upon how much money the community is willing to invest in the subsidy. Portland CLT also said they have plans within the next three years hire development staff and create their own condo projects. Portland CLT emphasized that this was a huge step for them because prior to this point they had always
worked in concert with other organizations on development projects. Portland CLT suggested, somewhat cautiously, that if this effort succeeds they will be producing 30 units every year beginning in 2008.

Sawmill CLT believes that they have been successful in achieving their goals. They are proud of the fact that they have been able to recycle subsidies from two resales, and that the membership, which consists of both leaseholders and citizens residing in different parts of Albuquerque, has fostered a sense of community. Sawmill CLT cited that they had improved the quality of life for over 115 individuals/families and that these people have experienced the benefit that comes from safe, high quality, permanently affordable housing in an outstanding neighborhood.

Sabin CDC believed they had been successful because they had succeeded in providing affordable housing for low- to moderate-income individuals who were unable to afford market rate homes. Sabin CDC mentioned that the success of the organization was defined by the amount of people who had become aware of the program and displayed interest as well as those who had actually purchased homes. Sabin CDC emphasized that success is achieved whenever a home is sold or whenever anyone learns about the program.

**Conclusion**

Table 4 shows us that the information yielded from the surveys is positive. All of the CLTs revealed that homes either remained affordable or became more affordable following resale. None of the CLTs experienced any foreclosures and there was only one
default. But, even this default was due to unusual circumstances. The two CLTs that had information on average net gains reported that homeowners were yielded $20,000 or $10,000-15,000 on average following resale. This is good news because it shows that homeowners are able to pocket some of the appreciated value despite limitations on equity. All the CLTs despite having homes taxed at market rate (with the exception of Colorado CLT) received exemption or a discount on the taxable value of land. This reveals that it is not impossible for a CLT to acquire breaks on property taxes. If the City of Tucson starts a CLT they should pursue similar tax breaks. Every CLT used an appraisal-based formula, which gives the impression that this is the most standard formula. Likewise, every CLT also received assistance in the form of grant funding or land donations or land discounts. The CLTs gave very positive answers when asked about their individual level of success. Whether it was because they had enabled individuals to live closer to work, helped renters to become homeowners, recycled subsidies, or simply introduced the CLT model, all believed they had been successful.
CHAPTER 8-GETTING STARTED

Introduction

This chapter details the specific steps that should be taken to begin a CLT in Tucson. Many of the activities within these steps will overlap during the process and hence they are not numbered. The chapter addresses several areas. The first of these steps is introducing and explaining the CLT model. This particular section will discuss which institutions and community members should be contacted help launch the CLT. The next section deals with determining who will use the model. This section touches on the three routes the City may take to create a CLT as well as some of the initial activities that must take place such as forming an initial board. The chapter continues with a discussion of what factors the City may want to consider in establishing their target group. The following section offers some suggestions on how the city should go about resolving resale equity and property tax issues. Funding is critical in the early stages of forming a CLT, so the next section considers some options that may be available to the City. The final section details specific steps that must be taken when incorporating including choosing a name, writing the necessary clauses for the articles of incorporation, filling out the necessary Arizona Corporation Commission and IRS forms, and electing the new board of directors.

Introduce and explain the CLT model

There are many individuals and institutions in Tucson who should be invited to an educational session to explain how the CLT model works. Various nonprofits that focus on housing such as Chicanos Por La Causa (CPLC) and Habitat for Humanity Tucson
should be invited. Local lenders, particularly FHLB members should be invited as well. A complete listing of FHLB members in Arizona is available online.¹ Lenders should also be asked if they would consider providing mortgage financing to CLT homeowners in the future. Representatives of various entities that hold vacant land, such as Tucson Electric Power, should be invited to determine whether they would be willing to donate land in the future. A representative of the Arizona Department of Housing and Urban Development should be included to provide specific input on how funding might be used.

**Determine who will use the CLT model**

There are essentially three options for determining who will use the model. Existing nonprofits such as CPLC or Habitat for Humanity Tucson may wish to use the CLT model to develop housing in the future. Another option is to allow one of these groups to help get the new CLT started and then at a later point release it to operate independently. Alternatively the city may wish to create a new organization. A new organization should apply to become a section 501(c)(3) tax-exempt organization, and a CHDO in order to be eligible for set-aside funds under the HOME program. There are many issues that must be taken into consideration when forming an entirely new organization. For example, staff must be hired and a location for a central office must be determined. Specific service areas must be conceived. An organizing committee should be established early on to address these matters. If an existing organization is already

providing service to a particular neighborhood or district that the CLT might serve, then
the two organizations should plan to work in harmony rather than conflict with each
other. For both methods the structure of the governing board must be determined.
Although the traditional tripartite board will eventually be adopted, an initial board must
be formed and serve until the CLT is operational and enough homes have been sold to
add members to the new board. Individuals and institutions invited to educational
sessions and who show interest may serve on the initial board or the organizing
committee.

**Determine the target group**

It will be necessary during initial meetings to determine who will be the target
group of the CLT. Income is likely to be the foremost consideration, but other factors
may also be considered. For example, the City may wish to provide housing to certain
workers within the community such as police officers, fire fighters, teachers, etc.
Employers may be interested in the CLT being used to provide workforce housing. The
University of Arizona might envision the CLT being used for faculty housing. At this
stage it would be helpful to seek input from members of the Tucson Metropolitan
Chamber of Commerce as well as representatives of the University of Arizona.

**Resolve resale equity and property tax issues**

In an earlier section of this report, four types of resale formulas were discussed.
Each of these formulas has different applications and it will be important at meetings to
discuss which will best serve a CLT located in Tucson. How properties are taxed will be crucial to how well a CLT maintains the affordability of its homes. A representative of the Pima County Assessor’s office may provide valuable insight into this matter. Determining whether or not it is permissible for CLT properties to be assessed at below-market value will be an important topic of discussion. Another critical issue will be whether taxes should increase at a lower rate than surrounding properties not under resale restrictions. Strategies that have been employed in other parts of the country should be presented as options and evaluated for legality in Arizona. In order for a resale formula to be adopted two-thirds of both the board and the regular membership must cast an affirmative vote.

**Create a framework for funding**

Even in the early stages of formation, an organizing committee must piece together a budget and establish where money will come from. Fortunately, there are many avenues for funding available to a CLT. This report has explored several options that may be available. However, some are less readily available than others. ICE offers several types of loans through its revolving loan fund. ICE can provide guidance on how these loans may most effectively be used. HOME grants have more intricate guidelines and restrictions and an individual with a thorough knowledge of the program should be available to offer advice. FHLB’s Affordable Housing Program does not provide grants to nonprofits by themselves and therefore will require a partnership between an organization and a local FHLB member. Financing for homebuyers through Fannie
Mae’s CLT Option is subject to specific requirements and it not available if the CLT has not shown at least two years of successful experience in developing and managing affordable housing. This means that the CLT Option will not be available to a new organization.

If necessary, contact Burlington CLT for technical assistance

Normally, most cities or organizations wishing to create a new CLT would contact ICE (Institute for Community Economics) for technical assistance. However, ICE is not currently accepting any new contracts because they are considering a merger with another organization. Fortunately, Burlington CLT offers technical service as well. Burlington offers onsite assistance with organizational development for $1,000 a day (8 hours) plus travel and per diem charges.

Specific steps towards incorporation

Below are some steps and guidelines to follow in the process of incorporating. These steps and guidelines are essentially a summary of the information presented in the previous chapter. For specific models, please refer to the sample certificate of incorporation and the model bylaws in the *Community Land Trust Legal Manual*. The initial board will conduct or coordinate these steps.

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1. Draft, adopt, and file articles of incorporation

A. Choose a name for your corporation. The word “‘association’, ‘bank’, ‘company’, ‘corporation’, ‘limited’ or ‘incorporated’ or an abbreviation of one of these must be included words.” It is important to remember that because a CLT is not actually a “trust business” it may not use the word “trust”. However, the acronym “CLT” may be used as part of a corporate name.

B. Conduct a preliminary search for available names. You may test the availability of a name using the link in this the footnote at the end of this sentence.

C. Draft articles of incorporation. The following should be included:

- the organization’s legal name.
- the office location.
- the names of individuals who will serve on the initial board of directors.
- the signatures of incorporators to verify the articles’ accuracy.

D. The articles should contain clauses that indicate the following:

- the CLT is structured as a membership organization and is not governed by a self-perpetuating board.

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5 Arizona Revised Statutes, sec. 10-401 (January 1, 2007),
6 Arizona Corporation Commission, Arizona Corporation List (Arizona, 2007),
purposes and powers are tax-exempt and contain clauses that prohibit nonexempt activity.

- membership is available to both lessees and nonlessees.
- the definition of initial and regular members and what rights they hold including voting rights.
- the board of directors will be elected by the membership at the first annual meeting by the members.
- the number of seats (or range of seats) that will be available on the board.
- the organization will steward the land for charitable purposes.
- board is charged with preserving the affordability of housing and improvements for low- to moderate-income people.
- the board itself will be divided into three parts each elected and represented by its own constituents who include: lessee members, nonlessee members, and the larger public interest.
- assets and earnings are prohibited from being distributed to members
- the role of the incorporators or the initial board.
- that the majority of the organization’s activities will not relate to political propaganda or legislative steering.
- the organization will not involve itself in political campaigns for public office.
- assets will be used solely for exempt purposes and that none of the net income. will be used to benefit corporate individuals, members, officers, or directors.
that if dissolution occurs assets will be distributed for charitable purposes or
given to another 501(c)(3) tax-exempt organization.

2. Complete and file the necessary forms for incorporation

A. Complete Arizona Corporation Commission Forms CF004\(^7\) and CF0001\(^8\).

B. File these forms with the Arizona Corporation Commission. It takes anywhere
from 20 to 25 business days for a regular filing to be processed. A fee of $35 may
be paid for an expedited process that takes up to 5 business days.\(^9\)

3. Draft and adopt bylaws

A. Follow the guidelines specified in Appendix B and the Community Land Trust
   Legal Manual. In order to adopt bylaws at least two-thirds of the initial board
   must cast a vote in favor of the adoption.

B. Check for consistency between the articles of incorporation and the bylaws.

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\(^7\) Arizona Corporation Commission, General Filing Instructions for Nonprofit Articles of Incorporation
\(^8\) Arizona Corporation Commission, Nonprofit Certificate of Disclosure (Arizona, 2007),
4. Complete and file necessary forms for 501(c)(3) tax-exemption

A. Complete IRS Form 1023 and other required forms and file with the IRS.\textsuperscript{10}

Include your completed and approved articles of incorporation as well as your bylaws. Other required materials include:

• Form 2848, Power of Attorney and Declaration of Representative\textsuperscript{11}

• Form 8821, Tax Information Authorization\textsuperscript{12}

• Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation\textsuperscript{13}

• A two-year budget\textsuperscript{14}

• A narrative essay explaining how describing the corporation’s programs and how they will advance its exempt purpose\textsuperscript{15}

It can take anywhere from 2 to 12 months before a Form 1023 is approved. This includes the time necessary to provide answers to follow-up questions. The application should be filed within 15 months of the corporation’s formation.\textsuperscript{16}


\textsuperscript{15} Ibid

\textsuperscript{16} Ibid
5. Elect a new board of directors

A. Schedule the time and location of the first annual meeting of the membership.

B. Nominate candidates.

C. Elect a new board of directors at first annual membership meeting.
CHAPTER 9-CONCLUSION

Should the City of Tucson start a community land trust?

It has been shown that City of Tucson, using its current policies, does an effective job of meeting the affordable housing goals within its Consolidated Plan. However, it has also been shown that within the City, wages have not kept pace with the price of housing. This has been to the detriment of key workers such as police officers, firefighters, teachers, and nurses who (assuming they do not live in a dual income household) cannot afford to purchase a house within the City’s limits. Section 8, CDBG, and HOME funds have all been effectively used to provide affordable housing. But, these programs use monies that once expended are lost forever. Would not it be wise to recycle subsidies using a shared equity model? This is a question of equity versus permanence. If the City is mostly concerned with establishing upward mobility through resale equity then it should not establish a CLT. However, the CLT model still allows for some equity to be retained by an owner upon resale. In the survey results, it was shown that two of the CLTs enabled owners to gain between $10,000 and $20,000 in resale equity. If establishing permanently affordable housing is the higher priority then there is no question that the City should establish a CLT. The survey results showed that all four of the CLTs were able to either preserve the same level of affordability or enable homes to become even more affordable to the next buyer. Furthermore, studies have shown that limited equity models are very effective in preserving affordability. The City of Tucson must decide for itself which priority it holds in higher regard and whether it is worth expending further subsidies on current policies. But, as mentioned earlier a CLT for the
City of Tucson should serve as a supplement rather than an alternative to existing programs.

I believe that if the City of Tucson decides to initiate the creation of a CLT they should not retain management of it; at least not in the long term. Managing a CLT would place huge burdens on the City and require the hiring additional staff which would be expensive. The City could do its part by providing financing and employing various regulations such as inclusionary zoning and density bonuses that would work to the CLT’s advantage. Furthermore, city employees could serve on the initial board or even in the future as part of the public category on the permanent board. The ideal route to follow is to place the CLT under the management of an existing nonprofit or if possible start an entirely new organization. Even if independence is the eventual goal, an existing nonprofit (such as Chicanos Por La Causa or Habitat for Humanity Tucson) could manage the CLT until it is ready to be let go. At some point the CLT will need to create a ground lease containing the restrictions on resale, absentee ownership, and subletting as well as the controls to prevent to prevent foreclosure. Chapter 12 of the *Community Land Trust Legal Manual* provides a model ground lease.\(^1\) No matter what route is chosen, I hope that if the City does decide to establish a CLT that this report will prove helpful to the process.

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\(^1\) Institute for Community Economics, *Community Land Trust Legal Manual* (Institute for Community Economics, 2002), Chapter 12
APPENDIX A: SURVEY QUESTIONS

1. Based on household income, have homes remained affordable or become more affordable upon resale? Have they become less affordable?

2. How many foreclosures have occurred? How many defaults? Has the CLT cured any defaults or repurchased any homes following foreclosure?

3. Has the CLT lost any land or homes from its portfolio? If so how much land and how many homes?

4. How long does a household normally reside in a home before reselling?

5. What is the average income of households who purchase CLT homes? What is area median income of the CLT’s service area?

6. What are the average net gains for a household from resale?

7. Have former CLT homeowners purchased market-rate housing, and if so how many?

8. How are property taxes applied to land and buildings? For example, are they taxed at market-value or at a percentage of market-value? Is there a cap on the rate at which property taxes increase over time?

9. What type of resale formula does the CLT use? Mortgage-based, indexed, itemized, or appraisal-based? Other?

10. What kinds of funding and assistance has the CLT received? Has the CLT received land donations?

11. In your opinion, has the CLT been successful in achieving its goals, and if so how do you define success?
APPENDIX B-ARTICLES OF INCORPORATION AND BYLAWS

Introduction

This appendix provides a description of the many factors that must be considered when adopting articles of incorporation and bylaws for a new CLT. In regard to the articles, this appendix includes information on the necessary structural elements and areas that must be addressed in the drafting process. The specific areas that must be addressed are the role of incorporators, local state requirements, IRS requirements for tax exemption, and use of the CLT model. In addition, this appendix discusses the role of bylaws and what elements must be included. This framework was adapted from the Model CLT Bylaws in Chapter 5 of the ICE Community Land Trust Legal Manual. The bylaws are constructed from ten articles that address the following areas: name and purpose; membership; the board of directors; officers; stewardship of land; ownership of land and other improvements and limitations on resale; amendment of the certificate of corporation and bylaws; dissolution; miscellaneous provisions; and initial membership and board, adoption of bylaws, and the first annual meeting.

Structural Elements for a New Community Land Trust

There are several structural elements that must be adopted when starting a new CLT. First, the CLT must be a membership organization rather than one administered by a self-perpetuating board of directors. This ensures that lessees and other individuals

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within the community play role in the organization’s government. Second, the CLT model and state law require the new organization to be structured so that earnings and assets may not be given to members. This mandate is necessary if the CLT wishes to qualify for 501(c)(3) tax-exempt status. If the CLT wishes it may even include a phrase in its articles of incorporation that more clearly establishes this prohibition. Assets and earnings, however, may be distributed to compensate for services rendered on behalf of the CLT or to promote any of the CLT’s charitable goals. In addition, if the CLT dissolves, it may gift its assets to another tax-exempt organization. Third, the CLT must include basic organizational documents as part of its structure. These documents include the articles of incorporation, bylaws, and an application for federal tax exemption. The articles of incorporation provide the CLT with a legal identity under state law. The bylaws are a legally binding document and provide active rules that the CLT must follow. Bylaws may be adopted by the board and members after the organization has been created by filing the articles of incorporation. Applications for federal tax-exemption are filed with the IRS. It may be several months before the IRS renders a determination of whether or not the CLT will be exempt. Once the CLT has acquired federal exemption it may pursue state tax exemption, even including sales tax if possible.

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3 Institute for Community Economics, *Community Land Trust Legal Manual*, 4-1.
4 Ibid., 4-2
5 Ibid., 4-3
Establishing Articles and Bylaws

Several points must be remembered when establishing the articles and bylaws. First, they must be consistent and not contradict each other. Second, even though the bylaws should not be adopted until the CLT acquires tax-exempt status, this check for consistency should take place before the articles are filed. The articles are very general while the bylaws are specific. Therefore, the bylaws must be checked thoroughly to ensure they line up with the articles. Both the articles and bylaws will be submitted to the IRS for review before awarding tax-exempt status. In addition to checking for consistency, the IRS will look closely to determine if the purposes of the CLT are those that should be tax-exempt, and if the articles limit the CLT’s power enough to warrant exemption. Fourth, the articles must contain various elements of information including the organization’s legal name, purposes and powers, office location, and the names of those individuals who will serve as initial directors until the permanent directors are elected. Articles also sometimes provide a variety of rules pertaining to membership, the board of directors, and other areas. Normally, an attorney or another individual who is familiar with the nonprofit law for the state in question will guide the process of adopting and filing articles. However, the organizing committee should be involved in establishing the purposes and general structure of the articles. Chapter 4 of Community Land Trust Legal Manual provides an excellent example of a certificate of incorporation.

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6 Ibid
7 Ibid., 4-4
Requirements for Articles of Incorporation

Three essential areas must be addressed when drafting the articles of incorporation. These areas include the role of incorporators/and or the initial board, local state requirements for nonprofit organizations, IRS requirements for tax exemption, and how the new organization will make use of the CLT model. The articles must state the role of incorporators, or, if present, the initial board. The initial board and incorporators may or may not be the same individuals. It is necessary that, at a minimum, one incorporator sign the articles of to certify they are accurate. If an initial board has not been established, the incorporators will administer the actions of the organization until one is elected. This election will occur at a first annual meeting. In fact, one of the first tasks the incorporators must carry out, once the organization is established, is to schedule this meeting.\(^8\)

When addressing state requirements it is wise to begin by researching local not-for-profit corporation laws. It is also helpful to speak with someone who is well-versed in these laws. Often the office of the Secretary of State can provide information. A good method to discover how articles should be structured for a particular state is to acquire the articles of a local nonprofit (a CLT if possible). It is necessary to find out if the proposed name of the CLT is already in use. The Office of the Secretary of State contains records on the names of organizations and can answer questions on availability.\(^9\)

The laws of the state may also place restrictions and requirements on the use of certain words in the name of an organization. For example, many states require the use of

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\(^8\) Ibid., 4-5

\(^9\) Ibid., 4-4
“Corporation”, “Incorporated”, or “Limited” in a name. In Arizona, a corporate name must include the word “association’, ‘bank’, ‘company’, ‘corporation’, ‘limited’ or ‘incorporated’ or an abbreviation of one of these words.”

In some states the use of the word “trust” requires the approval of the state Banking Department. This is not necessary in Arizona, however, a corporation is not allowed to use the word “trust” unless it is engaged or intends to become engaged in the trust business.

Organizations are required by state laws to define what type of nonprofit they will serve as. A CLT is the type of organization whose purposes are charitable. A statement of purpose must be included in the articles. Foremost, the statement should reflect organizational goals. Statements should also contain phrases that pertain to the IRS’s definitions of exempt purposes.

Certain states place restrictions on how a statement may be worded to meet IRS exemption requirements. Some prohibit a statement from containing all the IRS-required restrictions, instead allowing for their placement in separate articles. Certain states even go so far as to completely disallow use of the IRS’s conventional language. However, if this is the case, the IRS will allow organizations to use a different method of stating restrictions. In Arizona, there are no such restrictions on the use of IRS language in statements of purpose. In some states, if the CLT decides to state education as one of its purposes, it needs to submit its articles to the State Education Department. This is not necessary in Arizona.

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11 Ibid

12 Institute for Community Economics, Community Land Trust Legal Manual, 4-5.
State laws typically require that the location of the organization’s main office is mentioned in the articles. It may be additionally required that the articles identify the territory that will serve as the organization’s service area. In addition to a known business location, in Arizona, the statutory agent, the incorporators, and the initial board of directors must all provide their addresses when filing the articles of incorporation. Various powers are granted to a corporation depending on the state in which it resides. If there are other powers that will be included that are not among those listed in the statute then these powers must be explicitly mentioned in the articles of incorporation; sometimes even powers granted by statute are included in the articles. In some cases this is accomplished by quoting the language of the statute. This provides the reader with the opportunity to understand the corporation’s powers without having to refer to the actual law. In addition, to the powers provided to the corporation, state laws also provide specific powers to members and the board of directors. What rights and powers are granted may be contingent upon the bylaws. There are some statutory rights and powers that are always granted unless the articles and bylaws provide a limitation. However, some rights and powers are absolute and may not be eliminated by the articles and bylaws. Certain statutes may govern an organization’s meetings, notice of meetings, quorums, and voting. These are requirements that normally should be dealt with in the bylaws, but some may need to be addressed in both. Some states require the approval of the State Attorney General or a justice of a state court before filing articles. Arizona Corporation Commission, General Filing Instructions for Nonprofit Articles of Incorporation (Arizona, 2007), http://corporations.azcc.gov/filings/forms/cf0041.pdf (Accessed July 7, 2007). Institute for Community Economics, Community Land Trust Legal Manual, 4-6.
statutes do not require preliminary approval from a particular entity before filing articles. Arizona statutes also give wide deference to a corporation’s articles and bylaws in regard to meetings, notices, quorums, and voting (see Chapter 8, Article 2 of Title 10).\(^{15}\)

A new CLT should strive to achieve tax-exempt status. Achieving 501(c)(3) Tax Exempt Status provides various benefits including:\(^{16}\)

- Exemption from federal and/or state corporate income taxes
- Possible exemption from state sales and property taxes (varies by state)
- Ability to apply for grants and other public or private allocations available only to IRS-recognized, 501(c)(3) organizations
- Potentially higher thresholds before incurring federal and/or state unemployment tax liabilities
- The public legitimacy of IRS recognition
- Discounts on U.S. Postal bulk-mail rates and other services.

An organization should fully understand IRS requirements before filing articles. It may be necessary to amend articles later if requirements are not met.\(^{17}\) In order to meet IRS requirements of section 501(c)(3), purposes in the articles must qualify as “charitable, educational, or scientific.” The sample certificate found in Chapter 4 of the *Community Land Trust Legal Manual* contains statements that qualify. There must be specific clauses in a statement of purpose that pertain to prohibitions of non-exempt activities. The statement should contain a clause indicating that a large portion of the corporation’s


\(^{17}\) Institute for Community Economics, *Community Land Trust Legal Manual*, 4-5.
activities will not include propaganda or attempts to steer legislation in a particular direction. Likewise, there must be a clause indicating that the corporation will not partake in any political campaign in favor of a candidate running for public office. In addition, there must be a clause that states that assets will be used solely for exempt purposes and that none of the net income will be used to benefit any corporate individuals, members, officers, or directors. Last, there must be a clause that relates, that should the corporation dissolve, assets will be distributed for charitable purposes or to another organization with 501(c)(3) tax-exempt status. The CLT should strive to maintain as much power as legally possible while still adhering to the CLT model and IRS requirements.\textsuperscript{18}

In the past, references to the CLT model were relegated to the bylaws and ignored in the articles; however, the newer model encourages details to be included in both documents. It is important to include model features in the articles so that policies and bylaws are not adopted that do not adhere to the CLT model. Although it is not the case in Arizona,\textsuperscript{19} in some states state approval is required before amending articles. This ensures that specific features of the CLT model will not be amended carelessly. Specifically, the articles should address the CLT model of membership, the board of directors, the stewardship of land, and the preservation of affordability. Articles should mention that the CLT will be a membership organization and not have a self-perpetuating board and that membership will be open to both lessees and nonlessees. More specific

\textsuperscript{18} Ibid., 4-7
requirements for membership may be reserved for the bylaws as should the specific process of selecting directors. The bylaws normally contain restrictions on selling land. However, these restrictions will be strengthened if they are included in the articles. The articles should also mention that members and the board are charged with ensuring that housing remains affordable to low- to moderate-income people.20

**Corporate Bylaws**

Bylaws create a framework for the organization. Specifically, bylaws define who may become members, how membership is acquired, and what rights and powers the membership holds. They also indicate what the steps are for electing a board of directors, and specify the duties and powers of the board. In addition to other rules, bylaws contain provisions for how decisions must be made. These rules should be designed to fit the CLT model. Bylaws should be developed in a manner consistent with state laws and with the articles of incorporation. In fact, articles and bylaws should be constructed simultaneously to ensure consistency. The rules within the bylaws themselves should be consistent as well. Terminology should be consistent and contradictions and confusion should be avoided. The CLT should be especially careful in how it defines members. Certain situations will require specificity while others will not. However, rules should be specific enough so that certain matters will not result in long debates in the future. Specificity in the bylaws may serve to better protect the interests of all those involved but at the same time too much specificity may frustrate some causing individuals to conceive

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20 Institute for Community Economics, *Community Land Trust Legal Manual*, 4-8
and follow their own rules. There must be some rule requiring directors to attend meetings on a regular basis. However, because of conflicting schedules, and human error, a 100 percent rule may be too demanding.\textsuperscript{21} Indeed, if too much time is required of members and directors, they may become reluctant to participate because of competing interests (such as jobs and children).\textsuperscript{22}

\textbf{Board Requirements under HOME}

It will be important to consider the requirements of HOME when drafting bylaws. In particular, consideration should be given to the requirements necessary to become a CHDO. In order to meet these requirements at least one-third of the members of the governing board must be “residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations” and “A formal process must also be available for the beneficiaries of the low-income program to provide advice to the organization regarding decisions on “design, siting, development, and management of affordable housing.”\textsuperscript{23}

HOME also upholds specific CLT definition requirements. In order to be considered a “CLT” a majority of the board of directors must be elected by the corporate membership. The board must consist equally of lessees, nonlessees, and another category of persons as prescribed in the organization’s bylaws. As stated in an earlier chapter, CLTs are exempt from the requirement of having a demonstrated history of successfully

\begin{footnotes}
\item \textsuperscript{21} Ibid., 5-1
\item \textsuperscript{22} Ibid., 5-4
\item \textsuperscript{23} Ibid., 5-4-5-5
\end{footnotes}
using HOME funds in the community they serve. However, if a CLT wishes to become a CHDO it must meet all the regular requirements. For example, certain PJs require a CLT to have one-third of its board consist of low-income residents.  

The HOME Final Rule, has been read, by some, to prohibit individuals living in a HOME-assisted unit from sitting on a CLT’s board of directors. However, the rule indicates that this particular requirement “does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence.” Some have resolved that this requirement can be met by not allowing those who have previously benefited from HOME assistance to sit on the board of directors. However, another option is available to CLTs. A PJ may request (on behalf of CLTs) to receive exemption from this rule. HUD’s decision to grant exemption may be contingent upon “whether the person affected is a member of a group or class of low-income persons intended to be beneficiaries of the assisted activity, and exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.” CLT lessees are likely to fit this definition and enable the PJ to receive the exemption. CLT lessees are typically low-income persons intended to be the beneficiaries of the HOME program.

Model Bylaws

The following information is adapted from the Community Land Trust Legal Manual’s chapter on bylaws. The article headings are directly quoted from this source.

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24 Ibid., 5-5-5-6
25 Ibid., 5-6-5-7
This section provides ideas for establishing bylaws. These suggestions provide a framework to follow, but actual bylaws adopted by organization may be different. Bylaws are divided into ten articles, each dealing with a different set of corporate rules. To view the actual model bylaws please see Chapter 5 of the Manual.

**Article I: Name and Purpose**

This section simply states the name and purposes of the corporation. The name must be the same name as stated in the articles exactly, including abbreviations such as Inc. The IRS may require an amendment to make names the same if they differ before agreeing to grant tax-exemption. Purposes do not need to be stated exactly in the same way as the articles and are not absolutely necessary to include in the bylaws. However, they should be included to increase the ease of use for the reader. *The Community Land Trust Legal Manual*’s model suggests various purposes including the preservation of affordable housing for low- to moderate-income people, preservation of the quality of affordable housing, combating disinvestment in economically distressed communities, and protecting the natural environment and encouraging proper use of land and resources.\(^{26}\)

**Article II: Membership**

This article describes the roles and requirements of the regular and supporting members. Regular membership according to the *Community Land Trust Legal Manual*’s

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\(^{26}\) Ibid., 5-12-5-13
model is limited to various individuals living on the CLT’s land including building tenants, individuals that are resident-members of cooperatives or condominium associations, and homeowners. All lessee members receive automatic membership in the corporation and it is not necessary for lessee members to adhere to general membership requirements such as paying dues. In some cases CLTs only grant regular membership to residents of a particular geographic area. However, it may be difficult to decide on a clear boundary if this approach is used. When this approach is applied those who do not live in the specified area(s) may still become supporting members. The Community Land Trust Legal Manual’s model provides requirements for general membership. These members must be at least 18 years old and meet the initial membership requirements described in the articles of incorporation. Alternatively (not excluding the age requirement), people may qualify for general membership by attending one of the board meetings. To acquire membership individuals must also submit an application with a signed statement of support and pay annual dues.\(^{27}\)

**Continuation of Regular Membership**

The Community Land Trust Legal Manual’s model provides various requirements for continuing regular membership. After their first year, in order to retain regular membership, individuals must be lessees or show record of attending at least one board meeting. They may still meet this latter requirement if they show, despite sincere interest; they were unable to attend a board meeting for legitimate reasons. Alternatively, if

\(^{27}\)Ibid
individuals have a record of paying dues for the current year they may retain their regular membership. Those who are no longer active members should be removed from the list. This helps to gauge whether there is a sufficient members present at a meeting to vote on decisions. Attendance requirements vary from corporation to corporation and relate largely to how frequent meetings are.

Membership Dues

A description of membership dues itself must be provided in this article of the bylaws. The Manual provides a model to follow. Each year during an annual meeting the regular members vote on and establish an annual assessment of membership dues for the following year. If there is no assessment for a given year then the previous dues are simply forwarded to the following year. Cash may be used to pay dues, but members may alternatively pay by contributing labor to the corporation. If labor is used the board of directors decides the type of labor and the hourly rate at which work will be credited. Dues may be assessed by the board of directors or by the entire membership. Some corporations have a specific dollar amount stipulated in their bylaws. Potential labor contributions should not be a factor if CLTs elect to keep dues at a trivial amount (for example $1 a year). Although, some might regard such an amount as too small, membership dues should always be designed to avoid placing a burden on low-income

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28 Ibid., 5-12-5-14
29 Ibid., 5-14-5-15
people. Dues are often paid once a year during a regular time or between annual meetings that represent the close of a particular period.\textsuperscript{30}

**Membership Rights**

The rights of regular members must be explicitly stated. *The Community Land Trust Legal Manual*’s model instills regular members with various rights including the right to participate in membership meetings, the right to cast a single vote on decisions at these meetings, the right to nominate and help elect individuals to the board of directors, the right to be nominated to become a director, and the right to receive minutes of membership meetings as well as the corporation’s annual reports. Certain matters always require the vote of regular members including decisions to change membership dues, amend the bylaws or the certificate of incorporation, or dissolve the corporation. The corporation should create a list of issues that are important enough to require the vote of all regular members and let other issues be decided by the board of directors.\textsuperscript{31}

Supporting members are individuals that have paid annual dues for the current year yet do not want to hold the role of a regular member. These members hold the same rights as regular members except that they may not cast votes on decisions made during regular membership meetings and may not participate in the election of the board of directors. This even includes a denial of the right to make nominations. While supporting membership is a feature that does not necessarily need to be included in the bylaws, it is a good way to get those who live outside the immediate service area involved, and may

\textsuperscript{30} Ibid
\textsuperscript{31} Ibid
serve as a means to collect more revenue from membership dues. Generally, supporting members are those who do not desire to vote or attend meetings.32

**Meeting Requirements**

This article must include a provision regarding membership meetings. It is required that both regular and supporting members receive an adequate written notice of meetings; one week is often considered reasonable and sufficient. The written notice must also contain an agenda describing the topics that will be discussed. Notice periods greater than one week are better but it may be difficult to for officers and staff to provide this early of a notice. Some corporations may compromise by requiring larger notice periods for certain meetings that involve more important matters such as dissolution.33

Annual meetings should be regularly scheduled at a particular time of year. This scheduling may be based on the timing of the corporation’s first meeting. However, other considerations such as when new directors are elected or when the annual report is presented may place the meeting at a different time. *The Community Land Trust Legal Manual*’s model places annual meetings in the fourth quarter of each year and gives the board the right to choose a specific time and location. The time and locations of regular member meetings are decided by the regular membership. Special meetings, like annual meetings, involve noticing the regular and supporting membership. Special meetings may either be called by the board of directors or through a written petition conducted by the regular membership. *The Community Land Trust Legal Manual*’s model requires this

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32 Ibid
33 5-16-5-17
petition to be signed by no less than 10 percent of the regular members. A completed petition is mailed to the president of the corporation. Additional provisions state that membership meetings of all kinds should be open to the public and that the corporation’s secretary or another designee is given the duty of recording the minutes. To become official these minutes must be approved at the following meeting.34

**Quorum Structure**

It is inherent that meetings involve voting on decisions. *The Community Land Trust Legal Manual*’s model stipulates that a quorum must be composed of no less than one-third of the regular membership although the secretary has the right to determine the exact number. This one-third requirement is a new innovation. Usually, in the past CLTs have established very low quorums, often consisting of 10 percent or less of the voting membership. If the regular membership consists of very few individuals it may be effective to require a quorum even larger than one-third. If a corporation wishes it may divide the required quorums into varying amounts depending on the issues at hand. The making of decisions must follow certain guidelines. *The Community Land Trust Legal Manual*’s model requires decisions to be made by the quorum at membership meetings whenever possible. Consensus must be sought initially. But, when consensus cannot be achieved matters are decided by an affirmative vote of the majority of the quorum. The corporation’s secretary must record the language of the motion before a decision is made.

34 Ibid
In addition, before a decision is agreed to, or voted upon, all members must be given a fair chance to express their views.  

**Article III: Board of Directors**

**Number of Directors**

The corporation must determine how many directors will serve on its board. The CLT model calls for a board that is evenly divisible by three. *The Community Land Trust Legal Manual’s* model uses 12 directors, but the exact number may be influenced by the size of the corporation and how many qualified candidates are available. Boards with less than nine directors may be unstable because directors might be replaced periodically. In addition, having fewer directors places an overall heavier responsibility those who do serve. By the same token boards with over 15 members may prove to be cumbersome. Bylaws cannot give a range and must specify an exact number. For example, a corporation cannot function effectively if it is allowed to have anywhere from 9 to 15 members.  

**Nominating Directors**

*The Community Land Trust Legal Manual’s* model for nominating directors contains many specific provisions. Nominations pertain to three groups and are broken down into the following categories: lessee representatives, general representatives, and public representatives. For the lessee and general groups the nominations must be made

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36 Ibid., 5-18-5-19
during the annual meeting or submitted to the secretary in written form ten days before the annual meeting. For these two groups representatives may only be nominated by members of their own group. The board of directors makes nominations for the public representatives ten days before the annual meeting. If the number of nominations is less than what is needed to fill seats then the board will make up the difference by making additional nominations. The board can expedite this process by generating an approved list of nominees prior to sending notice of the annual meeting. The secretary is charged with drawing from this list to complete the remaining nominations. The public category may reserve seats for government representatives, financial industry representatives, or religious or service organization representatives. It is worth noting that this category represents the “public interest” and not the public sector. In fact, a CLT will usually not set aside more than two seats for government representatives.37

**E lecting Directors**

Directors are elected by regular members gathered as a quorum at the annual meeting. Voting is done separately for each category of representatives. If an individual has been nominated in more than one category, and is elected, he or she will not be able to be elected in any remaining category. If no general members are present during the annual meeting then lessees may elect the representatives for the general membership. All members may vote for public representatives. A nominee is elected if he or she acquires a plurality of the vote even if that does not equate to a majority of the vote. An

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37 Ibid., 5-18-5-20
alternative method is to use a separate ballot for each seat where the candidate who gets the majority of the votes wins.\textsuperscript{38}

**Vacation of Director’s Seats**

If a director vacates or is removed from his or her seat then the remaining directors may vote for a candidate to fill the vacancy. Alternatively, through consensus, the board could allow the members to elect a new director later on by waiting until the next annual meeting. A provision may be established that is more specific and allows only lessee members to vote on vacated lessee seats and vice-versa for the general membership. However, a provision of this nature might not be appropriate for an emerging CLT because there may not be enough initial members who are lessees and the choice of candidates will be too limited. An earlier CLT model only allowed the directors elected by the board to serve in the interim until the next annual meeting when a new director would be properly elected. But, this method may not fit because it makes it difficult for a CLT to make use of the staggered terms it requires.\textsuperscript{39}

**Low-Income Board Representation**

In order to meet HOME’s CHDO requirements *The Community Land Trust Legal Manual’s* model includes the following provision: “the Membership and the Board of Directors shall at all times ensure that at least one third of the Board is maintained for residents of low-income neighborhoods, other low-income community residents, or

\textsuperscript{38} Ibid., 5-20-5-21
\textsuperscript{39} Ibid., 5-22-5-23
elected representatives of low-income neighborhood organizations.” Similar provisions should be included in a CLT’s bylaws if it desires to fulfill CHDO requirements.40

**Directors’ Terms**

*The Community Land Trust Legal Manual’s* model provides that after the first annual meeting, and following the election of board members, each director must be assigned, either through mutual agreement or randomly, a one-year or two-year term. This ensures that the terms are staggered. If there is an even number of directors half in each category should receive a two-year term and half a one-year term. Terms begin at the end of the annual membership meeting following election. For those individuals who fill vacancies on the board-terms begin upon acceptance of the position. A maximum number of terms that may be served by one individual should be established to ensure new individuals are provided with a chance to serve on the board. *The Community Land Trust Legal Manual’s* model prohibits directors from serving more than three consecutive terms, although they may serve again, after a year’s absence, for an additional three terms.41

**Process and Cause for Directors’ Removal**

A threshold must be established to determine how many consecutive meetings may be missed by a director before his or her seat is rendered vacant. *The Community Land Trust Legal Manual’s* model limits this threshold to three absences and excludes

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40 Ibid
41 Ibid
absences from emergency meetings. When this occurs the president must notify the
director via letter that he or she has been absent too many times. The director is given the
opportunity to make a case that he or she had legitimate reasons for not attending
meetings. This notice must be sent at least one week prior to the meeting where the
board will make a determination on the vacancy. It is at this meeting that the director
shall be given the opportunity to present his or her case. If the board reaches a
determination that the director did not have good cause for being absent the director’s
seat shall be rendered vacant immediately following the judgment.42

Specific rules must be established to govern the removal of directors. The
Community Land Trust Legal Manual’s model provides for the removal of a director who
is “judged to have acted in a manner seriously detrimental to the Corporation.” First, at
least three regular members must sign a statement that details the charges to which they
testify. This statement must be delivered to the president or to the vice president if the
president himself or herself is being charged. The president or vice president will then
deliver a copy of this statement to the director who is charged with misconduct. The
board, and the charged director will each select members to evaluate the charges; these
two members will select a third member. If the first two members cannot reach consensus
on a third member within 10 days, the third member will be chosen by the board. These
members will serve on a special committee that will make a recommendation to remove
or not remove the director. The special committee will issue a report, hold a hearing, and
present evidence before making a recommendation. If it is recommended that the director

42 Ibid., 5-24-5-25
be removed then the regular membership may vote on the matter during a membership meeting. Prior to this meeting (which must be held within one month of the issuing of the recommendation) a notice containing a complete copy of the committees report will be sent to the regular membership.\textsuperscript{43}

\textbf{Notice and Schedule of Board Meetings}

\textit{The Community Land Trust Legal Manual’s} model provides that all directors must be mailed notice of a board meeting at least one week prior to the date of the meeting. Alternatively, the notice may be delivered to directors within five days of the meeting. An agenda must be included as part of these notices. State law may specify different minimum notice requirements. If a director appears at a scheduled board meeting without receiving notice then he or she is considered to have waived his or her right to the notice requirements. However, this right is not considered waived if he or she makes a protest that upon request is recorded in the minutes of the board meeting. The board, like the members, holds an annual meeting and this meeting must be held within six weeks of the annual membership meeting. In fact, this meeting is sometimes held immediately after the annual membership meeting. On occasion, CLTs may wish to call emergency board meetings that are not part of the regular schedule. For example, there might be a passing opportunity to acquire real estate and the CLT may desire to hold an emergency meeting to discuss the matter. \textit{The Community Land Trust Legal Manual’s} model provision for special and emergency meetings holds that the president, three

\textsuperscript{43} Ibid
directors, or 10 percent of the regular membership may call such a meeting. These meetings must adhere to the proper notice requirements. However, if the meeting will be used to address a pending emergency then three directors may agree to hold the meeting with only one day’s notice. Such notice must take the form of a telephone conversation or a personal meeting. If a matter is to be decided upon it must be included in the agenda prior to meeting. An exception to this rule may be made if every director is present they all agree to act on an issue not included in the agenda.44

Public Transparency and Executive Sessions

The Community Land Trust Legal Manual’s model provides that all board meetings must be open to the public, but an exception may be made, when during an open session, the board votes to enter an executive session to discuss a matter privately. To enter this session a motion must be made that states what business matter will be discussed. At this session only the matter described in the motion will be discussed. Furthermore, executive sessions are only to be used for discussions and may not be used to conduct binding actions. The Community Land Trust Legal Manual’s model states specifically what topics may be discussed during an executive session. These topics are mainly limited to matters where public knowledge could cause harm to the corporation. Other topics deal with appointing, evaluating, and dismissing employees, and arranging financing for potential leaseholders. An open session following the executive session may be used to conduct binding actions regarding the matter that was discussed previously.

44 Ibid., 5-26-5-27
There is an exception to this rule. Binding actions may be conducted during executive sessions for matters regarding real estate purchase options or contracts. Purchase options and contracts may be kept private to prevent members of the public from interfering with the favorable terms of a purchase or the completion of other purchases. At all board meetings a quorum should include at least one representative of each group as well as a majority of the board. The board should always initially seek unanimity in decisions. However, when consensus cannot be reached decisions may be made by a majority vote of the board. Minutes of these meetings are to be recorded by the secretary. A provision should be made to appoint a temporary secretary when the secretary is absent so minutes may be recorded. The board may designate this individual. Minutes are approved of (or disapproved of) at the following board meeting.\(^{45}\)

**Directors’ Duties**

The board is charged with many specific duties. The duties described in *The Community Land Trust Legal Manual*’s model are discussed here. The board must approve an annual report of the corporation’s activities over the previous year and ensure that this report is available in writing to all members. In addition to summarizing activities the annual report must include recent financial reports, and a list of all properties held by the CLT. The annual report should also provide a basic plan for the coming year. The board must also develop and adopt an annual budget for the forthcoming year. Usually, expenditures associated with acquiring and developing real

\(^{45}\)Ibid., 5-28-5-29
estate are not included in the annual budget. Rather these issues which deal with capital expenditures are resolved on a project-by-project basis and are not tied to the fiscal year. The board must adopt personnel policies that deal with hiring, supervising, and evaluating staff. The board must specify and use accounts for funds that are not in current use. The board must also describe what institutions will be chosen for this purpose. Financial institutions typically require board resolution to authorize the opening of an account. The board must resolve who will be entrusted with signing certain documents on behalf of the board and what procedures will govern these transactions. These documents may include but are not limited to deeds, leases, contracts, checks, drafts, endorsements, and notes. In addition, the board has many other duties including acquiring real estate, conveying the use of property, repurchasing property, acquiring resources to conduct development, and ensuring that finances are used efficiently and wisely.\textsuperscript{46}

**Directors’ Powers**

*The Community Land Trust Legal Manual’s* model assigns the board of directors various powers. The board has the power to appoint or hire, as well as discharge advisors and consultants; the bylaws may include special provisions for appointment of legal counsel and auditor. Boards have the power to establish internal committees for specific purposes. These purposes may include organizational outreach, researching patterns of ownership, potential real estate acquisitions, and laws, creating a ground lease and a resale formula, establishing policies for selecting residents, and fund raising. Tasks

\textsuperscript{46}Ibid., 5-30-5-31
associated with these purposes should be assigned to committees; however, the number
of committees that the corporation will be able to form will be contingent upon how
many individuals are available to offer service. As mentioned earlier, the board has the
power to call for special meetings of the membership. The board has the power to both
borrow and loan money to accomplish the purposes of the corporation. Lending may be
used as part of a loan fund created by the corporation to provide financing to lessees who
wish to borrow money in order to conduct home repairs.\textsuperscript{47}

**Directors’ Limitations**

While the board has certain powers, *The Community Land Trust Legal Manual’s*
model also calls for specific limitations on power. The board is normally limited it its
ability to conduct certain actions absent the approval of the regular membership. These
actions include assessing membership dues, removing directors, selling land, creating or
altering the resale formula, amending the certificate of incorporation or the bylaws, and
dissolution of the corporation. Members and directors that have a vested interest in
matters that may affect their property or business should not vote on actions that pertain
to these interests. By the same token family members, partners, and employers of a
member or director with such interests should not vote on these actions. The threat of a
conflict of interest may limit the ability of certain directors who are also lessees from

\textsuperscript{47} Ibid., 5-32-5-33
voting on certain actions affecting their property, however, this threat should not dissuade lessees from serving on the board.48

**Article IV: Officers**

_The Community Land Trust Legal Manual’s_ model contains specific provisions that refer to the corporation’s officers. A president, vice president, secretary, and treasurer must be designated within the corporation. Officers are elected by a majority vote of the board of directors; this election takes place during the annual meeting. Officers normally serve until the next annual meeting when another election shall take place. Board members who are also officers lose their position as an officer if they resign or are removed from the board. It is possible to remove an officer from his or her official position without removing his or her position on the board. A removal from a position as officer must be approved by a two-thirds vote of the board. Grounds for removal from a position may result from inconsistency in carrying out duties such as a failure to regularly attend meetings.49

**President**

The president’s responsibilities include:

- presiding over board and membership meetings,
- speaking with the officers and committees and monitoring the accomplishment of their duties,

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48 Ibid
49 Ibid., 5-32-5-37
• preparing an agenda for all meetings,
• notifying and warning directors of their status if they have been absent too often,
• calling special meetings when necessary,
• fulfilling presidential duties associated with removing a director, and
• performing other duties as assigned by the board.

**Vice President**

The vice president’s responsibilities include:

• accomplishing the duties of the president when he or she is absent or is unable to do so and carrying out duties the President has become disqualified from fulfilling,
• making sure bylaws are maintained,
• answering the board’s questions in reference to the bylaws, and ensuring that the board’s and member’s actions are compliant with the bylaws,
• monitoring committees to make sure they are acting in accordance with the prescriptions of the board and meeting as often as required, and
• accomplishing other duties that the board may assign.

**Secretary**

The secretary’s responsibilities include:

• ensuring that the list of members and their addresses stays current,
• ensuring that members and the board receive proper notice regarding meetings,
• ensuring that there is clear representation of motions and votes among those present that there is an accurate record of these actions in the minutes,
• ensuring that the minutes of all meetings are recorded and stored on a permanent record, and
• performing any other tasks assigned by the board.

Treasurer

The treasurer’s responsibilities include:

• ensuring that the corporation’s financial records are kept according to appropriate accounting practices,
• ensuring that accounts used to deposit funds are held under the name of the corporation,
• ensuring that documents such as deeds, title papers, and leases that certify the corporation’s rights and interest in property are maintained in a secure and efficient manner,
• ensuring that debts to the corporation are paid and that gifts to the corporation such as money or property are received,
• ensuring that funds are utilized in a manner consistent with the decisions of the board,
• ensuring that financial reports are accurate; contain balance sheets and expense statements, and are presented to the board prior to the end of each quarter of the fiscal year,
• ensuring that all reports and returns mandated by government agencies are completed and filed on schedule, and
• ensuring the board is presented with a complete annual operating budget before the start of the fiscal year.

While it is not necessary that the treasurer have knowledge of accounting practices it is essential that he or she is able to work with an accountant or staff to gain an understanding of financial records.

**Article V: Stewardship of Land**

*The Community Land Trust Legal Manual’s* model specifies that the corporation must adhere to certain principles of land use. Much of this responsibility falls upon the board. The board monitors how land is used and conveys it for the purpose of providing affordable housing to low- to moderate-income people and follows several principles including:

• considering the needs of individuals who may become lessees and ensuring that land rights are distributed fairly,
• ensuring that when land rights are conveyed the future affordability of homes is preserved, and
• ensuring that the future health of the community and the environment is considered and protected when conveying land use rights.

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50 Ibid., 5-36-5-37
According to *The Community Land Trust Legal Manual’s* model, decisions to mortgage or encumber the corporation’s land must be approved by both the board and the parties that lease the land.

**Sale of Corporate Land**

*The Community Land Trust Legal Manual’s* model provides that the sale of the corporation’s land is prohibited with the exception of specific circumstances which must be governed by certain rules. A specific parcel of land may be sold if the following requirements are met:

- the corporation’s ownership of the parcel is not in excess of 60 days when the resolution is passed,
- no party is currently leasing the land, and
- sale of the land accomplishes a charitable goal of the organization in a way that is superior to what could be accomplished by maintaining ownership; for example, the proceeds are used for other charitable activities.

In any other situation the parcel may only be sold if the following circumstances are present:

- a meeting (following proper notice of the matter at hand) has been held where a resolution to sell land has been passed through the vote of at least two-thirds of the board,
- those who lease the land currently have provided written approval of the sale, and

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51 Ibid., 5-38-5-39
two-thirds of the regular members have approved the sale following proper notice and details of the proposed transaction.

Article VI: Ownership of Housing and Other Improvements Located on the Corporation’s Land and Limitations on Resale

The Community Land Trust Legal Manual’s model calls for specific provisions that address the corporation’s use of housing and other improvements on its land and the adoption and alteration of the resale formula.\(^{52}\)

Ownership of Housing and Improvements

In regard to ownership of housing and improvements, the board should encourage and enable low- to moderate-income individuals to own housing and other improvements on the corporation’s land. To accomplish these tasks provisions should be made to enable to the acquisition and sale of housing, acquisition of financing and loans, and acquisition of subsidies and grants to reduce the cost of housing.\(^{53}\)

Preserving Affordability

An important goal of the corporation is preserving the affordability of housing for future residents. Therefore, the board, using the ground lease as a vehicle for enforcement, should ensure that homes are resold only to eligible low- to moderate-income buyers and only for price determined by the resale formula. It may be provided

\(^{52}\) Ibid
\(^{53}\) Ibid
that, in certain situations, and only for the charitable purposes of the corporation, the board may elect on occasion to lease parcels of land that are not subject to the requirements of buyer eligibility, and the resale formula.\footnote{Ibid}

**Adopting and Altering a Resale Formula**

In order to preserve affordability for future homebuyers the board and the regular membership must adopt a resale formula according to the specific guidelines. The formula should allow the seller to yield a return consistent with his or her investment in the property, and should establish a price that is affordable to a low- to moderate-income buyer at the time of conveyance. *The Community Land Trust Legal Manual’s* model provides that in order for a resale formula to be adopted, following proper notice of the meeting, two-thirds of both the board and regular membership must provide an affirmative vote. Some organizations have chosen to simplify the process by requiring only that the board approve the initial formula, granting the regular membership the authority to approve or disapprove subsequent changes. The goals of the corporation are achieved through the long-term application of a resale formula, nonetheless, *The Community Land Trust Legal Manual’s* model provides, that the resale formula may be altered if certain requirements are met. For example *The Community Land Trust Legal Manual’s* model specifies that the resale formula may be altered if both the board and the regular membership reach a determination that the resale formula in its current state is a barrier to accomplishing corporate goals. A change in the formula may become certified

\footnote{Ibid}
through an affirmative vote passed by at least two-thirds of both the board and the regular membership.⁵⁵

**Article VII: Amendment of Certificate of Incorporation and Bylaws**

*The Community Land Trust Legal Manual’s* model provides that the certificate of incorporation and the bylaws may only be amended, repealed, or replaced if at least two-thirds of the board and regular membership have cast an affirmative vote to do so at a meeting following proper notice and explanation.⁵⁶

**Article VIII: Dissolution**

*The Community Land Trust Legal Manual’s* model provides that in order to render a decision to dissolve the corporation and distribute its assets the various requirements must be met. Foremost, both two thirds of the board and the regular membership must vote to approve this decision following proper notice and explanation of the matter. This explanation must include a complete description of the proposed plan of dissolution and must be provided to all members no less than three weeks before the meeting.⁵⁷

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⁵⁵ Ibid., 5-40-5-41
⁵⁶ Ibid
⁵⁷ Ibid., 5-42-5-43
Article IX: Miscellaneous Provisions

The Community Land Trust Legal Manual’s model contains specific provisions in regard to the fiscal year, deposit of funds, use of corporate checks, loans, and contracts, and indemnification (relative to state): 58

- the corporation may choose to have its fiscal year correspond to the calendar year beginning on January 1 and ending December 31, however, in some cases it less expensive to choose different beginning and ending periods because accountants are conducting fewer audits during these times of year,
- funds not in current use must be deposited in accounts at reliable financial institutions as determined and authorized by the board,
- checks, endorsements, drafts, notes, and bills, must be signed by corporate officers or agents according to the procedures authorized by the board of directors, monies credited to the corporation must be deposited according to the procedures determined by the board,
- the board has the sole authority to contract loans and advances for the corporation,
- the board has the sole authority to incur debt on behalf of the corporation; each authorization must be specific to a particular transaction; the board may not grant this power to individuals within or outside the corporation,
- the board may authorize officers or agents to enter and execute corporate contracts which it has specified and approved; officers or agents may not enter or execute corporate contracts that board has not specified or approved,

58 Ibid., 5-42-5-45
• corporate directors and officers (or their heirs, executors, or administrators) shall be indemnified to protect them from personal liabilities resulting from certain expenses such as those relating to attorney’s fees and disbursements that are linked to a defense, settlement, suit, or proceeding involving the corporation; however, if the action is the result of personal negligence or misconduct of duties, the director or officer shall not receive indemnity.

Article X: Initial Membership and Board, Adoption of Bylaws, First Annual Meeting

The Community Land Trust Legal Manual’s model contains special provisions governing initial membership, the initial board of directors, the adoption of bylaws, nomination of directors at the first annual meeting, and the conduction of the first annual meeting itself: 59

• initial members who have the right to vote must be individuals who are at least 18 years of age and have attended at least one corporate meeting within a certain time period,

• the certificate of incorporation specifies who shall serve on the initial board; once bylaws are approved the initial board must schedule the first annual meeting of the membership; initial directors shall retain their positions until new directors are seated following the first annual meeting,

59 Ibid., 5-44-5-45
• in order to adopt bylaws certain requirements must be met; a majority of the initial board must approve the bylaws before the first annual meeting, and at least two-thirds of the initial members present must vote to ratify the bylaws,
• following a discussion with initial membership the initial board must nominate candidates composed of equal thirds lessee representatives, general representatives, and public representatives; other candidates may be nominated by initial members during the first annual meeting,
• a particular quarter or monthly time period must be selected to hold a first annual meeting where bylaws shall be ratified, directors will be elected, membership dues will be assessed, and other business matters will be tended to; (5-46) the timing and location of the first annual meeting will be decided by the initial board; all initial members must receive a notice of the meeting and a list of board nominees no less than seven days before it takes place.

**Conclusion**

A new CLT must remember to include several elements as part of its structure. It must be a membership organization, it must make sure assets and earnings may not be distributed to members, and it must use specific organizational documents including the articles of incorporation, the bylaws, and an application for federal tax exemption. There must be consistency between the articles of incorporation and bylaws before submitting the application for federal tax exemption. The articles must include the organization’s legal name, purposes and powers, office location and the names of individuals who will
serve as initial directors. The articles of incorporation must address four important areas including the role of incorporators (or the initial board), local state requirements, IRS requirements for tax exemption, and how the CLT model will be used.

The bylaws will create a framework for the organization and define who can become members, how membership is achieved, what actual rights and powers members hold as well as describing the election, duties, and powers of the board of directors and how decisions are made. To achieve 501(c)(3) status the name must be stated exactly in the bylaws as it was in the articles. Even though it is not absolutely necessary, purposes should be included in the bylaws to enhance ease of use for the reader.

Any one who lives on CLT land is a regular member and has regular member rights including the right to participate in meetings, vote on decisions, nominate and become nominated for the board of directors, as well as receive minutes from membership meetings and receive annual reports. Supporting members have all the same rights as regular members except that they may not vote on decisions or at elections, and may not make nominations. Supporting membership is not a necessary component but serves as an excellent way to increase involvement from outside the service area and collect membership dues.

It is standard to have a minimum one week notice requirement that must include an agenda. Annual meetings should be regularly scheduled at a particular time of year although certain circumstances may warrant a deviation from the regular scheduling. The regular membership decides the time and location of these meetings. If certain provisions
are met special meetings outside of the regular schedule may be called. Membership meetings should always be open to the public.

The secretary has the right to determine the minimum quorum size necessary to vote on decisions although the Community Land Trust Legal Manual suggests a quorum of two-thirds of the regular membership. Consensus should always be initially sought, but when necessary a two-thirds vote may affirm a decision.

The number of directors who serve on the board must be evenly divisible by three. The exact number that is chosen will be influenced by the size of the corporation. The nominations for the board are divided into three categories: lessee representatives, general representatives, and public representatives. Lessee and general board nominations are always made during the annual meeting and only by members of their own group. Nominations for the public category are made 10 days prior to the meeting. Directors are elected through a plurality vote at the annual meeting by members gathered as a quorum. When a director vacates or is removed from his or her seat the board votes to fill the position or waits until the next annual meeting for a regular vote. The board itself should be structured to meet HOME requirements so that the CLT may eventually become a CHDO. The essential requirement is that the board must be one-third residents of low income neighborhoods or communities or elected representatives of low-income neighborhood organizations. In addition, beneficiaries of the organization’s activities must be allowed to offer input on specific decisions. Initial terms for the directors must be structured as 1 and 2-year time periods so that the terms may be staggered. Thereafter, all directors will serve two-year terms. Absences above a certain threshold or improper
conduct may cause a director to be removed from his or her seat following the proper process. Directors must receive a minimum week’s notice prior to a board meeting. The board may call executive sessions that are not open to the public for specific matters following the proper procedure. Binding actions may not be conducted during these sessions unless they are in regard to real estate purchase options or contracts. Director’s hold many duties including approving an annual report of the previous year’s activities, adopting personnel policies, specifying accounts to be used for funding, and tending to matters involving real estate acquisitions, development, and use. The board also has specific powers such as the ability to form internal committees for certain purposes as well as lend and borrow money on behalf of the corporation. However, decisions on certain matters such as assessing membership dues, removing directors, selling land, and creating or altering a resale formula always require the involvement of the regular membership.

Officers include the president, vice president, secretary, and treasurer. Each of these positions holds specific duties. Officers are elected at the annual meeting by a majority vote of the regular membership and serve until the next annual meeting. The corporation must adhere to certain principles of when overseeing the land such as making sure that it is used to provide permanently affordable housing for low- to moderate-income households. The board is given the responsibility of making sure the principles are followed. Sale of the corporation’s land is also prohibited except under certain circumstances. Resale formulas should be designed so that the seller can yield a return consistent with his or her investment yet keep the resale price affordable to low-
income households. Resale formulas may only be adopted or amended through a two-thirds affirmative vote of both the board and the regular membership. Likewise the Certificate of Incorporation may only be amended through a two-thirds affirmative vote cast by both regular members and the board. A decision to dissolve requires at least three weeks notice to all members and requires a two-thirds vote of both the board and regular membership as well. The bylaws should contain information on miscellaneous items such as corporate checks, loans, contracts, and indemnification. The bylaws should also provide guidelines for structuring the initial membership, adopting bylaws, and the first annual meeting.
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