

The Homebuyer's Guide to Community Land Trusts

A Product of Community Legal Resources
Community Land Trust Project
www.clronline.org/clt

I. What is a Community Land Trust?

A community land trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to ownership of housing for people who would otherwise be priced out of the housing market.

CLTs are unique in that they separate ownership of land and homes. CLTs permanently own the land on which homes and other structures or facilities are built, while individuals own the home (or other structure/facility) on the land pursuant to a long-term (usually 89-year) renewable ground lease.

The ground lease entered into by every CLT homeowner requires that owners live in their homes as their primary residences. CLT homeowners and their descendants have a right to occupy and use the leased land for as long as they wish, provided that they abide by the terms of the ground lease. In exchange for an initial subsidy from the CLT that is built into the price of the home, the terms of the ground lease place some limitations on the resale of the home—preventing resale to a household that does not qualify as low-or moderate-income, and limiting the sales price to keep it affordable. The lease lays out a “resale formula” that determines the maximum allowable price that may be charged upon resale of the home. Each CLT designs its own resale formula to give homeowners a fair return for their investment, while keeping the price affordable for other lower income people. In addition, the CLT has the right to buy back each home for an amount limited by the CLT’s resale formula.

Typically, CLTs are used in neighborhoods that are experiencing or are expected to experience gentrification. In many communities today, population growth and economic investment are driving up real estate prices so that fewer low- and moderate-income workers are able to afford to buy homes or rent in the communities where they work. Limited public funds are available to subsidize housing costs for lower income households. However, the gap between the amount of subsidy needed and the amount of subsidy available for affordable housing continues to widen as housing costs soar.

According to the U.S. Census, from 1990 to 2000 the median value of owner-occupied homes increased by 97% in the State of Michigan. While housing prices have escalated, government funding for affordable housing has decreased and private funders are unable to subsidize these projects at the level previously supported

by the government. While CLTs do not build equity for low-income communities as fast as conventional homeownership would, CLTs are designed to serve a population that otherwise would not have homeownership opportunities in the current conventional market. In addition, the initial investment in the affordability of the housing is preserved for future owners, thereby maximizing the utility of that investment.

CLTs are being developed in a growing number of communities – in expanding metropolitan areas from Cleveland, Ohio to Portland, Oregon; in university communities from State College, Pennsylvania, to Boulder, Colorado; and in expensive resort communities from the Florida Keys to the San Juan Islands of Washington State. In Michigan, CLTs have been formed in Traverse City, Boyne City, and Oceana County, among others.

II. The “Basics” of a CLT Deal

The deal that a CLT homeowner makes with the Community Land Trust is the ability to purchase an affordable house now in exchange for giving up a portion of the future appreciation of the home when the CLT homeowner sells the home later. Here is a brief outline of the typical terms of a CLT purchase:

- The homeowner purchases the house but not the land (which results in a lower purchase price).
- The homeowner leases the land from the CLT.
- The term of the lease is usually 89 years; the lease can be renewed once for another 89 years.
- When the homeowner sells his/her house, a portion of the appreciated value stays with the land under the ground lease, so the home price is affordable for the next buyer.
- The CLT home can be inherited.

III. CLT Homeownership

CLT homeowners have exclusive ownership of their home and enter into a ground lease with the CLT for the exclusive right to the land on which their home is situated. CLT homeowners are responsible for the maintenance and upkeep of their home and its land consistent with the terms of the ground lease. Upon resale, a CLT homeowner will not receive 100% of the increase in the home's value since purchase. Consistent with the terms of the ground lease, the CLT homeowner will receive some portion of the CLT home's increase in value since purchase.

A. The Home Purchase

CLT homeowners purchase their homes in a traditional manner.

1. The Offer to Purchase

An offer to purchase is a legal document describing the CLT homebuyer's wish to purchase a CLT home. The main difference between a typical offer to purchase and a CLT offer is that the CLT homebuyer is buying the house but not the land.

2. Financing

CLT homeowners, although purchasing the CLT home at a reduced/affordable price, will almost always need to seek a loan from a commercial lender in order to buy the CLT home. CLTs make an effort to work with and educate local lenders regarding the nature of CLTs so financing will be available to potential CLT homebuyers.

3. The Closing

The closing is where the buyer and seller sign all the papers that ensure that the buyer legally and officially owns the house. A CLT closing is similar to other closings in many respects. The main difference is that in addition to all the loan documents and deeds, a CLT closing involves signing the CLT Ground Lease.

Upon completion of the purchase of a CLT home, the CLT homebuyer will receive and record a warranty deed conveying the “improvements” (described on the face of the warranty deed but including, among other things, the CLT house) from the CLT to the CLT homebuyer.

B. The Ground Lease

At the same time that the CLT homeowner purchases the home/improvements, the CLT homeowner will enter into a ground lease between the CLT (as lessor) and the CLT homeowner (as lessee). The ground lease will typically be for a term of 89 years and be automatically renewable by the lessee. The purpose of the ground lease is to retain the CLT’s right to constrain the resale price of the CLT home.

An outline of a standard Community Land Trust Ground Lease is provided at the back of this Guide. Although each local CLT may modify the standard CLT Ground Lease to meet its needs and to best serve the community and the CLT homebuyers, the basic components of the CLT Ground Lease remain the same.

Why is the CLT Ground Lease so long? Eighty-nine years (the period of the lease) is a long time so the CLT Ground Lease tries to address all the possible contingencies that could happen in that time.

IV. Resale of a CLT Home

The applicable terms for resale or inheritance of a CLT home will be found in the Ground Lease. The basic element of a Community Land Trust’s mechanism for preserving the affordability of a CLT home is the Resale Formula. Typically, the Resale Formula limits the CLT homeowner to some percent of the gain in value of the CLT home. When the CLT homeowner wants to sell their home s/he is limited by the Resale Formula in their Ground Lease which determines the Purchase Option Price. The Resale Formula typically provides that the Purchase Option Price is equal to:

- (a) What the CLT homeowner paid for the CLT home when s/he first bought it; **plus:**
- (b) Some percentage (usually between 20 – 35%) of the appreciation in value of the CLT home, as determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home to the current appraised value of the CLT home at the time the CLT homeowner seeks to resell.

EXAMPLE (Assuming CLT homeowner retains 25% of the appreciation in value of the CLT home):

- CLT homeowner paid CLT \$90,000 when it purchased the CLT home.
- At the time of purchase the CLT home was appraised at \$105,000
- At the time CLT homeowner seeks to resell the CLT home, the appraised value is \$125,000 – an appreciation in value of \$20,000.
- Twenty-five percent (25%) of \$20,000 is \$5,000.
- The Purchase Option Price equals what the CLT homeowner originally paid (\$90,000) plus twenty-five percent of the appreciation in value (\$5,000).

Therefore, the CLT homeowner can resell the CLT home (to either the CLT or another low-income purchase) for the Purchase Option Price of \$95,000.

V. Consulting with an Attorney

The CLT Ground Lease typically requires the CLT homebuyer to consult with an attorney. The attorney is required to go over the ground lease with the CLT homebuyer to make sure that the CLT homebuyer is entering into the agreement with a complete understanding of the terms of the CLT Ground lease.

VI. The Community Land Trust

The Community Land Trust (a nonprofit 501(c)(3) corporation) has an interest in the long-term preservation of the CLT home – both its physical structure and its affordability. The CLT is governed by a board of directors. The CLT operates consistent with its articles of incorporation (filed with the State of Michigan) and its bylaws (adopted by the board of directors). A CLT homeowner (or prospective CLT homebuyer) can request a copy of the CLT's bylaws.

Typically, a CLT is a membership organization and all CLT homeowners are considered members. In addition, members of the community are often members. The structure of the CLT will be described in the CLT's bylaws.

Meetings of the CLT board of directors are meetings of a private entity, and not subject to the Open Meetings Act, which requires government agencies to allow public attendance at meetings.

VII. Frequently Asked Questions*

How much control do I give up by not owning the land beneath my house?

Lessees -- homeowners, farm owners, or business owners -- retain most of the rights and responsibilities that go with ownership. CLT control is generally limited to areas where the CLT has a long-term interest. For example, it is vital to the CLT to preserve affordability of housing units. Most leases also prohibit absentee ownership of housing because it is generally not in the community interest. Also, CLTs want to protect the condition of the land and buildings which would be left at the end of the lease term.

Will banks and other financial institutions make loans for homes on leased land?

Yes. There are dozens of banks, housing finance agencies and other mortgage lenders who lend to CLT homeowners. When first approached, lenders may be concerned that a CLT will inhibit their ability to foreclose in the event of a default and make it difficult to remarket the property in a timely manner. CLTs have been able to negotiate mortgage agreements that address the legitimate concerns of lenders and also protect the CLT's long-term interest in the property by allowing the CLT to step in and cure a default, when necessary, to prevent the property from being sold on the open market.

Do CLTs pay property taxes?

Yes. Residents pay taxes on their homes if they own them and the CLT pays property taxes on landholdings. CLTs can qualify for exemption from federal and state income taxes, but they usually pay local real estate taxes on the land they own. The cost of these taxes is covered by lease fees paid to the CLT by those using the land. (In some cases CLTs and their residents may request an assessment based on the resale value of the home as determined by the CLT's resale formula rather than the market value of the property.)

What happens if a lessee wants to move away from the CLT?

After giving the CLT adequate notice, a lessee may sell the improvements to an eligible buyer, transfer the lease, and move away. Since CLTs commonly retain an option to buy all improvements on CLT land, a lessee who wishes to leave may sell his/her house to the CLT. The CLT will, in turn, sell this house and lease the land to a new lessee.

How is the resale price of a home determined?

Each CLT has a formula that will determine the maximum amount to be paid when a homeowner sells his or her home. The formula may take into account the value of improvements made by the homeowner, and it may allow the price to be adjusted for inflation. Generally, the aim is to give the homeowner a fair return while limiting the price to insure the home will be affordable for the next low-income owner.

Isn't a mixed ownership arrangement of this sort -- with buildings owned by one party and the land by another -- pretty rare?

Not as rare as you may think. The separation of land and buildings and the leasing of land to the owner of the buildings is an old, established and widely-used mechanism. Many substantial commercial buildings are on leased land, perhaps the most famous of these being Rockefeller Center in New York City. There are large areas where people own homes on leased land: Baltimore, Maryland; Davis County, California; and many other regions. It is now becoming more common for developers to establish residential projects on leased land.

Does the CLT ever sell its land?

Very rarely. Once the CLT has acquired a parcel of land, its intent is to hold it indefinitely -- never again allowing the land to be bought and sold as a commodity. Most CLTs structure their bylaws to require the consent of all affected leaseholders and a supermajority of the board and membership for the corporation ever to sell any of its land. There have been situations, however, when CLTs have found it necessary or prudent to sell a parcel of land -- exchanging land that is not appropriate for the CLT's purposes for land that is, or selling off some land to avoid losing the rest.

What happens to the CLT's land and lease arrangements if the CLT is dissolved?

If a CLT is dissolved and ownership of the land is transferred, the new owner is obligated to honor the long-term lease agreements between the CLT and its leaseholders. Should the land ever be offered to a non-charitable buyer, the resident has the right of first refusal to buy the land.

How does CLT home ownership compare with other home ownership?

Land trust homeownership is essentially the same as other homeownership except that the land that CLT homes are located on is owned collectively by the membership organization.

The Same

- The homeowner secures a loan from a lender.
- The homeowner accumulates equity.
- The homeowner may will the home to heirs (both home and lease may be inherited).
- The homeowner may make alterations and improvements.
- The homeowner receives federal mortgage tax deduction.
- The homeowner may enjoy the types of rights that renters are frequently precluded from—having pets, planting a garden, repainting the house, etc.

Different

- The homeowner (and all subsequent buyers) must meet income qualifications.
- The purchase price is lower, usually 20-30% below the market rate, because the land is not included.
- The homeowner will accumulate a restricted amount of equity from ownership of the home.
- The CLT owns the land, and the homeowner leases the land from the CLT for a nominal fee.
- The homeowner agrees to live in the home as a primary residence most of the time.
- The homeowner will sell the CLT home at an affordable price, helping the next family of modest means to become a homeowner.

How are CLTs different from conservation land trusts?

They are similar in many ways. Both CLTs and conservation land trusts control land use for the benefit of people in the future as well as the present, but they tend to be concerned with different types and uses of land. Conservation trusts are primarily concerned with controlling rights to undeveloped land in order to preserve open space, ecologically fragile or unique environments, wilderness, or productive forest or agricultural land. CLTs, on the other hand, are primarily concerned with acquiring developed or developable land for specific community uses -- particularly residential use. These concerns are not mutually exclusive, and some land trusts combine these purposes, preserving some land in a natural state while leasing other land for development. All land trusts have an ethic of land stewardship; they try to see that land is not developed or used inappropriately.

Outline of Standard Community Land Trust Ground Lease

This is an outline of key provisions of a standard community land trust ground lease. This outline is intended to make the terms of the ground lease more understandable to people who are not attorneys. This is not a substitute for the ground lease.

- I. **Letter of Acknowledgement/Attorney's Declaration**
 - When a CLT homebuyer (the “Lessee” in the Ground Lease) intends to purchase a CLT home, the CLT will require that the CLT homebuyer meet with an attorney. The attorney should thoroughly explain the Ground Lease and go over all aspects of purchasing a CLT home. The CLT homebuyer will sign Exhibit B in order to acknowledge that such a discussion has taken place with the attorney. The CLT homebuyer's attorney will sign Exhibit C in order to acknowledge that s/he participated in such a discussion with the CLT homebuyer.

- II. **Transfer of Leased Land**
 - This Article clarifies that the CLT homeowner has purchased the “Improvements” and via the Ground Lease, the CLT homeowner is leasing the Land only. The Land is described in this Article so there is no confusion as to what portion of the Land is being leased to the CLT homeowner.

 - The CLT may mortgage the land but if there is a foreclosure of the mortgage, the Lease will continue without affecting the CLT homeowner's rights as long as the homeowner is not in default of the terms of the Lease.

- III. **Duration of Lease**
 - The Ground Lease is for 89 years. This is the maximum number of years that the CLT can provide to the CLT homeowner under the terms of Michigan law. However, the Ground Lease provides for an “Option to Extend” that allows the CLT homeowner (or a successor who has assumed the Ground Lease) to extend the term of the lease for another 89 years (for a total of 178 years).

 - This Section also provides that when the CLT homeowner or the CLT sells the house, the lease stays in effect for the next CLT homeowner.

- IV. **Use of Land**
 - The CLT home and the Land are for residential use only. Restrictions placed on residential land use by local zoning law will apply to the CLT homeowners use of the land and CLT home.

 - The CLT homeowner (or his/her children, dependents or immediate family not paying rent) is required by the Ground Lease to occupy the home for a certain number of months each year.

 - The CLT is allowed to inspect the Land (not the House) if the CLT provides the CLT homeowner with 24 hours notice. In an emergency, no notice is required.

 - The CLT homeowner has a right to the uninterrupted use of the Land, like a standard homeowner. Similarly, the CLT homeowner

has an obligation to maintain the Land and the CLT home in good, safe and habitable condition, like a standard homeowner.

V. Rent

•The CLT will charge the CLT Homeowner a Monthly Rent. This Monthly Rent will include a specified Base Rent. The CLT can, at its discretion, increase (or decrease) the Monthly Rent each year based on the Consumer Price Index or other identified index.

VI. Taxes and Assessments

•The CLT homeowner will be responsible for paying property taxes on both the Land and the CLT home.

•The CLT may collect the property taxes and be responsible for the actual payment of the property taxes with these collected funds.

•The CLT homeowner will also be responsible for paying any assessments that are charged against the Land or the CLT home.

VII. Improvements

•“Improvements” is defined as any and all buildings, structures, fixtures and other improvements purchased by the CLT homeowner (in other words, the “CLT home”). Improvements are owned by the CLT homeowner.

•Any construction in connection with an existing or new improvement is subject to the following conditions:

All costs shall be borne and paid for by the CLT homeowner;

All construction shall be performed in a workmanlike manner and shall comply with all applicable laws, ordinances and regulations, including the requirements of local and state public health authorities;

All exterior dimensions (including height) of such improvements shall not be increased or expanded, nor shall any additional improvements be constructed without the prior written consent of the CLT;

The CLT homeowner shall furnish to the CLT a copy of any plans and building permits for such construction prior to commencing construction.

•The Lessee (home owner), at their sole expense, maintains the land and all improvements, in full compliance with all applicable laws.

•The CLT will not reimburse the CLT homeowner for any improvements made to the property, other than what is reflected in the Purchase Option Price (see Article X). The Purchase Option Price may be changed by a written agreement between the CLT and the CLT Homeowner if the CLT agrees that a major alteration warrants it.

VIII. Leasehold Mortgage Financing

- These provisions address the needs of the CLT homeowner’s mortgage lender. They also contain language protecting the CLT’s interests.

- A “permitted mortgage” is defined.

- Requires the mortgage holder/lender to notify the CLT in the event of a default on the CLT homeowner’s mortgage. In the event of foreclosure, the mortgage holder/lender will notify the CLT and the CLT will have the right – but not the obligation – to pay off the mortgage and retake possession of the CLT home.

IX. Liability, Insurance, Damage and Destruction, Eminent Domain

- Provides that the CLT homeowner is responsible for anything that happens in the CLT home or on the Land. The CLT homeowner is required to carry certain minimum amounts of insurance and provide evidence of that insurance to the CLT.

X. Transfer, Sale or Disposition of Improvements

- The CLT home must be sold (and resold) to a family at 80% or below area median income, as defined by the Department of Housing and Urban Development (HUD). This applies only at the time of purchase – so if a CLT homeowner won the lottery two weeks after s/he buys a CLT home, s/he can still stay as long as s/he likes.

- When the CLT homeowner dies, s/he can leave her/his CLT home to a family member, as long as the family member meets the above income restrictions.

- When the CLT homeowner purchases the CLT home and executes the Ground Lease s/he will include as part of the Ground Lease a current appraisal in order to be able to calculate the increase in appraised value at the time of resale.

•VERY IMPORTANT – WHEN THE CLT HOMEOWNER WANTS TO SELL THE CLT HOME

The CLT homeowner provides a written letter of notice to the CLT, with a current appraisal attached;

The CLT has a certain number of days to let the CLT homeowner know if the CLT wants to buy the CLT home or not. The CLT has the right of first refusal to repurchase any CLT home – which means the CLT has the option of repurchasing the CLT home, but the CLT is not required to.

If the CLT decides to repurchase the CLT home, the CLT has a certain number of days to exercise its option (i.e. actually buy the CLT home).

Whether the CLT repurchases the CLT home or the CLT homeowner sells it on his/her own, the CLT home must be sold to a household at 80% or below area median income.

THE PRICE THAT THE CLT HOMEOWNER CAN SELL HIS/HER HOUSE FOR IS SET. THIS IS CALLED THE "PURCHASE OPTION PRICE". IT IS CALCULATED AS FOLLOWS:

- The house can be sold for the lesser of:
- The current appraised value, or
- The Purchase Option Price (as described below).

•PURCHASE OPTION PRICE:

(a) what the CLT homeowner paid for the CLT home when s/he first bought it; plus

(b) a percentage (specified in the ground lease) of the appreciation in value of the CLT home, as determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home from the current appraised value.

EXAMPLE (Assuming CLT homeowner retains 25% of the appreciation in value of the CLT home). CLT homeowner paid \$90,000 for the CLT home – and it was appraised at \$105,000 when the CLT homeowner bought it. When CLT homeowner wants to sell it, the appraised value is now \$125,000 – an increase in appraised value of \$20,000. Twenty-five percent (25%) of \$20,000 is \$5,000. The resale price is therefore \$90,000 plus \$5,000 for a total price of \$95,000.

XI. Assignment and Sublease

- The CLT homeowner cannot assign or sublease the Land leased by the CLT homeowner pursuant to the Ground Lease.

XII. Default

- This section describes what happens if the CLT homeowner defaults (i.e., fails to pay the Monthly Rent or otherwise fails to meet an obligation or condition provided for in the Ground Lease) on the Ground Lease. It also describes what happens if the CLT defaults on the terms of the Ground Lease.

XIII. General Provisions

- "Lessee Membership" provision: Usually provides the CLT homeowner with free membership in the CLT.
- "Notice" provision: Provides the addresses for the CLT and the CLT homeowner.
- "Severability and Duration" provision: Provides that if any sections of the Ground Lease are not enforceable under the law, they are considered removed from the Ground Lease. Such an event does not invalidate the rest of the Ground Lease. ???Duration???
- "Recording" provision: Provides that the CLT homeowner and the CLT are going to record a "short form" version with the local Registrar of Deeds rather than recording the entire Ground Lease. The CLT and the CLT homeowner will rely on the terms of the Ground Lease, not the terms of the recorded "short form", to determine the terms of the agreement.

This document is a product of the Community Legal Resources Community Land Trust Project. Please check the CLR CLT Project website for updates to this document: www.clronline.org/clt.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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