



City - CLT Regulatory Agreements

Planning for Municipal Oversight of
Community Land Trust Performance

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Maintaining a stock of affordable homes in good repair, while preserving the owner-occupancy and continuing affordability of these homes over a span of many years, cannot happen without a significant commitment on the part of some outside party to make sure this happens. “Self-enforcing” controls over the use and resale of owner-occupied housing have proven in practice to be wishful thinking. Someone has to monitor and enforce them. Someone has to be the long-term steward of affordably-priced homes that a municipality has helped to create.² A number of municipalities have turned to Community Land Trusts (CLTs) to play this role, relieving local government of the administrative burden of monitoring and enforcing durable controls that the municipality has required as a condition of its support.

When the CLT is doing its job, the workload of the municipality is reduced, yet the municipality still has a role to play. Accountable to its own taxpayers and accountable, perhaps, to various federal or state agencies from which it initially acquired discretionary funds that were subsequently invested in the CLT, a municipality must ensure that the CLT is performing as promised. It is the municipality’s responsibility to “watch the watcher,” making sure that the CLT is a capable and diligent steward of the resale-restricted, owner-occupied housing in its own portfolio. In extreme cases, the municipality may need to remind the CLT of its responsibilities – or take legal action to compel the CLT to perform as promised. Under normal conditions, however, municipalities can assume a more hands-off posture, leaving the routine tasks of monitoring and enforcing the use and resale restrictions on a CLT’s homes to the CLT.

¹ Research for this report was supported by the Lincoln Institute for Land Policy

² A more detailed description of the responsibilities that a municipality – or its designee – must perform if publicly-assisted, owner-occupied housing is to remain affordable for many years can be found in Rick Jacobus, “Stewardship for Lasting Affordability: Administration and Monitoring of Shared Equity Homeownership,” available at www.burlingtonassociates.com

I. The Need for City-CLT Regulation

Municipalities that provide significant subsidies to make homeownership units affordable to lower income households have a responsibility to ensure that those resources are appropriately used and that the occupancy, condition, and affordability of publicly-assisted homes are permanently preserved. Many municipalities are accustomed to achieving this goal through direct regulation of assisted homebuyers. Grant agreements, loan documents, restrictive covenants or deed restrictions typically create a direct regulatory relationship between the municipality and the homeowner and impose resale price restrictions, occupancy requirements, insurance requirements and many similar requirements.

In a Community Land Trust project, the municipality typically imposes the same restrictions but it imposes them indirectly on the homeowner through the CLT's ground lease. The Ground Lease contains the resale formula, occupancy requirements and other restrictions. The best way for a municipality to ensure that CLT homeowners comply with the municipality's own requirements for the continuing occupancy, condition, and affordability of municipally-assisted housing is to require the CLT to include these requirements in the ground lease that the CLT executes with each of its homeowners. This approach can necessitate an initial investment of time, for the municipality must identify any requirements imposed by its ordinances, regulations or funding sources and then negotiate with the CLT to ensure that the CLT's lease contains the language necessary to satisfy all municipal requirements. For example, if municipal regulations limit subletting to no more than three months per year, a lease that allows subletting for only two months might be acceptable, while one allowing six months of subletting would have to be modified.

In exchange for project subsidies, a municipality will typically insist on the right to approve the CLT's ground lease and any subsequent amendments to the lease. Some jurisdictions have specified in their grant agreements or loan agreements certain key terms and key provisions that the CLT ground lease must contain. Rather than regulating and monitoring individual homeowners, in other words, the municipality regulates and monitors the CLT, watching to make sure the CLT enforces restrictions of most concern to the municipality. If the CLT ever fails to take appropriate action, the municipality retains the right to step in to protect its interests. This indirect regulation of homeowners may take slightly more time to

implement for the first CLT project, but the resulting structure is far easier for all parties to understand and much easier to administer over the long term. A single document, the CLT ground lease, contains all of the relevant provisions protecting the public's interest in the home. As the home subsequently sells from one lower-income owner to the next, only this one document needs to be assigned or re-executed.

Worst Practice: Double Regulation of Homeowners

Some municipalities insist on recording covenants or deed restrictions against the CLT's homes, supplementing – and usually duplicating – the regulatory agreements the municipality has already executed with the CLT. Homeowners are then regulated by both the CLT's ground lease and the municipality's covenant. At best, these double documents contain similar provisions. At worst, they contain provisions that confuse or contradict the meaning of each. Indeed, in at least one case, a municipality was discovered to have recorded a covenant on a CLT home that contained a resale pricing formula very different than the one contained in the CLT ground lease.³

It seems unrealistic to expect buyers truly to understand the myriad restrictions contained in multiple regulatory documents. While direct (and redundant) regulation might make it easier for the municipality to act should the CLT fail to perform as promised, the enforceability of resale restrictions relies, to a significant degree, on both the clarity and consistency of the contracts containing these restrictions and the informed consent of the persons who are signing these contracts. When different – and sometimes conflicting – provisions are scattered among a number of regulatory documents, the opportunities for misunderstanding, conflict, and legal challenge tend to multiply.

³ A court would have to decide, in this case, which of the two resale formulas should take precedence, with the municipality possibly arguing for the formula yielding the lower price and the homeowners arguing for the formula yielding the higher price.

II. City-CLT Agreements

Different jurisdictions take very different approaches to structuring the legal relationship between a CLT and the municipality. Some of the most common arrangements include:

- Simple Grant Agreements
- Grant Agreements with repayment provisions (Recoverable grants)
- Grant Agreements secured with Covenants
- Loan Agreements with repayment provisions
- Loan Agreements recoded together with additional Covenants or Deed Restrictions

The advantages of each of these approaches is discussed further under enforcement below.

Most municipalities have similar goals and impose similar requirements on their CLTs. The content of a grant agreement, loan agreement, deed of trust, regulatory agreement, covenant, or resale agreement is likely, therefore, to include many of the same elements. The following elements are common – and, from the point of view of the CLT – preferred:

Performance standards: Whatever the regulatory agreement that is used by a municipality, it should clearly state what the CLT is supposed to do. The CLT's obligations might include such things as compliance with fair housing laws, maintaining an open process for marketing CLT homes, monitoring owner occupancy annually, enforcing provisions of the CLT lease, ensuring that future buyers meet approved eligibility requirements and that homes sell for no more than the formula resale price and reporting periodically to the jurisdiction on the status of the project.

Events of default: Regulatory documents should clearly spell out the circumstances that would constitute a default by the CLT. These commonly include the failure to meet any of the performance standards mentioned above, as well as any attempt by the CLT to sell the land or to dissolve the corporation.

Opportunity to cure: Regulatory documents should outline a process through which the CLT is given notice by the municipality of any default and

should provide an opportunity for the CLT to cure the default before further action is taken.

Remedies: In the rare case where the CLT does not cure a default of which it has been notified, the regulatory documents should outline the remedies the municipality may pursue. Forcing the CLT to repay loan funds may be an appropriate remedy in some situations (for example, when a CLT decides not to proceed with a project before municipal funds have been spent), the municipality should have other options as well. These might include the right to ask a court to require “specific performance” and, where state law allows, the right to take title to the land through a purchase option or foreclosure or to cause title to be transferred to another nonprofit organization which will take over responsibilities of the CLT.

Nondisturbance of ground lease: The regulatory documents should also contain clear language stating that if the municipality or any other nonprofit corporation, charitable trust, or governmental entity should come into possession of the land through any means, the CLT ground lease will survive such a transfer and the new owner will recognize the rights of the homeowner which are contained in that lease.

III. Performance Standards

When a local government gives project support or operating support to a CLT, a grant agreement or loan agreement is nearly always executed between the parties, specifying the CLT’s responsibilities or “performance requirements.” Every municipality has its own list of requirements for how a CLT should perform in exchange for this support, a list that is short or long, general or specific, flexible or rigid, varying greatly from one jurisdiction to another⁴. The CLT responsibilities most commonly subject to municipal oversight include the following, although it is the rare grant agreement or loan agreement that speaks specifically to all of them.

- ❖ Developing CLT homes

⁴ In communities where a CLT is one of several organizations receiving municipal support to produce affordable ownership housing, the CLT should not be burdened with more extensive regulations than other recipients of a municipality’s housing assistance simply because the CLT proposes to maintain affordability for a longer period of time.

- ❖ Marketing CLT homes
- ❖ Selecting homebuyers
- ❖ Initial pricing of CLT homes
- ❖ Maintaining the affordability of CLT homes
- ❖ Monitoring Homeowner Compliance with the Ground Lease
- ❖ Promoting the Maintenance of CLT Homes
- ❖ Preventing Foreclosures

Developing CLT Homes

Some CLTs act as the developer of housing brought into their portfolio, while others play only a stewardship role for housing developed by another nonprofit or for-profit corporation. The CLT's role in project development may include coordinating site acquisition, securing planning approvals and building permits, participating in designing the project, obtaining construction financing, and/or overseeing actual construction of the project. The municipality might require the CLT to perform any number of these development tasks, as a condition of receiving municipal support.⁵

Marketing CLT Homes

Cities, counties, and towns that invest in a CLT's homeownership projects have a responsibility to ensure that all income-eligible citizens have an equal chance of learning about the availability of these publicly-assisted homes and an equal opportunity to apply for the purchase of one. These homes must be marketed in an open and transparent way in compliance with federal, state, and local fair housing laws.

To monitor compliance with fair marketing requirements, some municipalities require CLTs to provide an annual report that describes the marketing strategies of the CLT and the demographics of the households buying CLT homes. Other municipalities

⁵ These requirements are no different for a CLT than for any other developer of affordable housing who is receiving assistance from the municipality. For that reason, they are not described in detail here.

do not require annual reporting, but they do require the CLT to maintain records of its marketing efforts, records that the municipality may review at any time. A number of cities, including **Berkeley CA**, require the CLT to submit an affirmative fair marketing plan for the City's approval for each and every project receiving city support. Other cities, like **Boulder CO** and **Albuquerque NM**, allow the CLT to submit a general plan for affirmatively marketing all of its housing, which is reviewed and approved by a city and then applied by the CLT to every publicly-assisted project that it later develops.

Selecting Prospective Homebuyers

After marketing its homes, a CLT must screen all applicants for eligibility and then decide which of these eligible applicants will be offered the opportunity to purchase CLT homes. Some municipalities manage this process almost entirely within local government, but most rely on the CLT to carry out the screening and selection of prospective homebuyers.

It is common for CLTs to have a two-tiered system of *threshold criteria and priority criteria*. Applicants must first meet certain threshold criteria like household income to be admitted into the pool of prospective homebuyers. Having met these threshold criteria for eligibility, applicants are then screened against a set of supplementary priorities established by the municipality and the CLT. An income-eligible household who is already a resident of the CLT's service area, for example, might be given priority in purchasing a CLT home over an income-eligible household who presently reside outside this service area⁶. It is important for the municipality and the CLT to establish such selection criteria well in advance of a project's completion and to distinguish clearly between threshold criteria and supplementary priorities. Common examples of both appear below:

Common threshold criteria:

- ◆ **Majority Age:** The head of household must be at least 18 years old.
- ◆ **Legal Residency:** Applicants must be legal residents of the United States.

⁶ This kind of local preference has been found to violate fair housing guidelines when it has the indirect effect of making it more difficult for members of various minority groups to access housing opportunities. A municipality should consult with an attorney with fair housing experience before implementing a local residency preference.

- ◆ **Maximum Income:** A household must earn an annual income that does not exceed some specified percentage of the area median income earned by households of equal size.
- ◆ **Minimum Income/ Maximum Debt Burden:** A household's monthly income must also be sufficient to support the housing costs for the home in question. Creditworthiness: Applicants should be able to demonstrate a history of responsible efforts to meet its financial obligations. Mortgage Readiness: Some programs require that an applicant "pre-qualify" for mortgage financing.
- ◆ **Asset Limits:** Some programs also impose asset limits that prevent applicants with low incomes but high net wealth from being eligible.
- ◆ **First-time Homebuyers:** Many programs require that applicants be first-time buyers, typically defined as someone who has not owned a principal residence in the past three years.
- ◆ **Appropriate Size:** Most programs set some limits that prevent single individuals from purchasing units that could house a larger family or discourage larger families from purchasing units too small to house them appropriately.
- ◆ **Down Payment:** Each applicant should have funds available for the down payment, if required.
- ◆ **Participation in Homebuyer Education:** Many programs require all buyers to complete some level of pre-purchase homebuyer education. CLTs often include education about the ground lease and resale price restrictions in these workshops and require applicants to participate prior to selection.

Common supplementary priorities/secondary criteria:

- ◆ **Displacement:** Many programs require that households that have been displaced from their housing in the course of developing a project receive first priority for any new units created.
- ◆ **Disability:** In some projects, certain units are designed to meet the accessibility needs of people with disabilities and these units are frequently offered first to applicants with the appropriate special needs.

- ◆ **Need:** Some projects provide for priority for lower-income households applying for a given housing unit.
- ◆ **Local Residency:** Many programs offer priority to residents of the community within which the housing unit is located. (These preferences must be designed carefully to comply with fair housing laws and are generally not allowed in projects that receive Federal HOME funds.)
- ◆ **Local Employment:** People who are employed by businesses located in the community (or have remained employed in the area for a minimum period of time) can be offered a priority.
- ◆ **Occupation/employer:** Some programs provide preference for members of certain occupations or employees of certain institutions.
- ◆ **Existing Owners of Affordable Homes:** Existing Land Trust home owners in need of more or less space or needing to relocate might be given special consideration.

Not all selection criteria are imposed by a municipality. Federal and state funding sources often specify many of these criteria in detail – and may even conflict in their requirements. Local governments can impose their own criteria on top of (or in the absence of) the requirements of other funders. In addition, CLTs will sometimes add requirements of their own. While it is tempting for local government to adopt a single set of detailed selection policies to cover every ownership project, this may not always be possible. What is important is that the criteria for each project be spelled out in writing and agreed to by all relevant parties before marketing begins.

Most CLT practitioners and municipal officials who were interviewed for this report indicated that the only requirements imposed by their local governments were related to income-eligibility, including maximum household income and maximum debt- to-income ratios. A few municipalities also require a household to be a first-time homeowner to qualify for a CLT home. Some impose a preference for applicants who currently live or work in their jurisdiction.

Local governments often require a CLT to submit its selection criteria to the municipality for review and approval. Municipal staff want to be involved enough in the process that they can vouch for the basic fairness of the selection process. In

some cases, the municipality may provide an appeal process for applicants who believe they have been treated unfairly. After approving the selection criteria, most local governments rely on the CLT to verify that applicants meet those criteria. Some require the CLT to provide documentation to the jurisdiction, verifying that selected buyers are eligible prior to closing. More often, municipalities require CLTs to provide annual reports on the process and outcome of selecting homebuyers. Such reports typically include such elements as:

- The number of applicants,
- The demographic distribution of applicants (age, race, household size, etc)
- The demographic distribution of those selected
- A description of the process used
- A description of any complaints and their resolution

In either case, the municipality is relying primarily on the CLT to perform the bulk of the work in screening and selecting buyers for the resale-restricted homes that the municipality may have helped to fund. This includes the collection of supporting documentation from all applicants, proving that CLT homes are only being sold to persons who meet the eligibility criteria set by the project's funders and by the CLT.⁷

Highland Park CLT - Highland Park, Illinois

The Highland Park Community Land Trust has a close working relationship with the city government. CLT program guidelines, including the organizational marketing plan and homebuyer eligibility requirements, were developed by the city-appointed task force that laid the groundwork for the CLT. These draft guidelines were then presented to the City of Highland Park for review and approval.

HPICLT employs a program-wide marketing plan which was approved by both the local government and by a fair housing lawyer. Additionally, the local HOME consortia (Lake County Consortia), includes a one-page appendix to housing subsidy contracts that outlines the Affirmative Fair Marketing requirements. This appendix not only reviews the basic federal requirements, but also identifies specific local agencies and organizations

⁷ The time that it takes to market CLT homes and to screen and select eligible buyers for these homes can vary greatly from one locality to another – even from one project to another within the same locale. Such variability is more a result of pricing and demand for the products being offered for sale than of the process used by different CLTs in selecting the buyers.

which must be provided notice of housing opportunities. It also requires that HPICLT maintain specific files which record affirmative marketing efforts and can be audited by government representatives.

Homebuyer selection is determined by a two-tier process. Threshold criteria include:

- Income eligibility, the maximum for all projects is 115% of AMI, but some may have a lower-income threshold depending on funding sources
- Asset limits
- Creditworthiness and mortgage qualification from an approved lender
- Citizenship or legal alien status
- Size of the household must be appropriate for the unit

Priority in being selected off the waiting list of eligible applicants is given to those eligible applicants who:

- Live or work in Highland Park;
- Earn less than 80% of AMI; or
- Contribute property to the Affordable Housing Inventory (– i.e., if an owner sells or contracts to sell property to HPICLT, then, with board approval, he or she may be given priority in purchasing a newly-constructed CLT home).

All prospective homebuyers must complete a homebuyer education course, including the orientation offered by HPICLT and the pre-purchase counseling program offered by Lake County, if a 1st time homebuyer.

Initial Pricing of CLT Homes

The price of a CLT home determines its affordability. In some cases, the municipality determines the prices of the CLT homes, but more often the CLT calculates unit prices to meet the affordability requirements of several different funding sources.

An affordable price is one which does not require households within a targeted income range to spend more than some specified percentage of the household's monthly income on total housing costs.⁸ For example, a program in which buyers

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were required to earn 80% of area median income or less might price units so that potential buyers earning 70% of AMI would pay no more than 30% of their income for their housing costs. While buyers earning up to 80% of AMI would be allowed, pricing to a slightly lower level means that the unit will be affordable to a range of potential buyers rather than only to those earning exactly the maximum allowable income. To calculate the affordable price a program must determine an appropriate percentage of income and identify which housing costs will be included in the calculation. Although 30% of monthly household income is the percentage used most widely, some municipalities consider prices which require a household to spend up to 38% of annual income to be “affordable.” Total housing costs typically include not only the monthly mortgage payment, but also the monthly cost of property taxes, insurance costs, condominium or homeowner association fees, and the CLT’s own lease fee. A few municipalities also require utility costs to be factored into total housing costs.

A majority of the CLT practitioners interviewed for this report said their local governments expected the CLT to set the initial price of each unit consistent with affordability requirements set by the municipality. Some cities, such as **Bellingham WA**, review the transaction prior to closing to ensure that the home will be sold at an affordable price. Other cities, such as **Madison WI**, calculate their own maximum price limits for all affordable ownership units and require the CLT to sell homes for no more than those limits. The Madison Area CLT reports that they price their units internally and their units are always well below the city maximum.

Worst Practice: Pricing Homes to Maximum Eligibility

There is a necessary and important distinction to be made between the percentage of Area Median Income that is used in setting the **price** of a CLT home and the percentage of AMI that is used in setting the **eligibility** of the CLT homebuyer. Too often, this distinction is blurred, leaving these maximums to be set at the same level. The CLT then finds itself with a marketing nightmare, where it may be required by a municipality to price its homes to be affordable to households earning exactly 80% of AMI and to sell those homes only to households earning no more than 80% of AMI. Pegging price and eligibility to the same percentage of AMI results in too small a pool of prospective homebuyers.

Maintaining Affordability of CLT Homes at Resale

CLTs adopt a resale formula that allows home prices to rise at a modest rate, maintaining affordability of these homes for a targeted population of low-income or moderate-income homebuyers. There are several options for designing this resale formula, but evaluating the pros and cons of each is beyond the scope of the present report⁹. Whichever formula is selected, it is clearly spelled out in the CLT's ground lease. Occasionally, the resale formula is also delineated in the municipality's loan or grant agreements. More commonly, however, these documents make only passing reference to the resale restrictions contained in the ground lease.

It is important for municipal officials to review, comprehend, and consent to the resale formula contained in the CLT's ground lease. On occasion, they may become involved in designing or amending that formula to ensure its consistency with the municipality's own housing programs or goals. In **Sarasota FL**, for example, the CLT's Board of Directors met several times with consultants to discuss several alternative formulas before selecting a resale pricing formula which they believed could meet the community's needs. This formula was then presented to the local government for its approval. In **Chicago IL**, where municipal officials played the lead role in establishing the Chicago CLT, the commissioner and senior staff from the Department of Housing were actively involved in deciding which resale formula the new CLT would adopt.

Local governments vary in the degree that they actively participate in monitoring resales at the time of transfer. Most municipalities, including **Orange County NC** and **Burlington VT**, do not involve themselves in the day-to-day business of reviewing resales, but they reserve the right to audit the CLT's files to verify that all buyers are income-eligible. At the other extreme, a few municipalities like Bellingham WA and Chapel Hill NC insist on reviewing every resale to ensure that

⁹ The CLT Resource Center, posted on the website of Burlington Associates, includes a number of tools to help communities select an appropriate resale pricing formula. See www.burlingtonassociates.com/resources. Detailed discussions of designing a resale formula can be found in: Institute for Community Economics, *The Community Land Trust Legal Manual*, Springfield, MA: ICE (2002) and in John Emmeus Davis, *Shared Equity Homeownership: the Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, Montclair, NJ: National Housing Institute, 2006.

promised affordability goals are being achieved but this requires the municipality to maintain the staff capacity and internal systems to ensure a timely response. The City of **Bellingham WA** relies on the Kulshan CLT to collect documentation verifying the applicant's household income and city staff then reviews and approves each homebuyer prior to closing. The Town of **Chapel Hill NC** relies on the Orange Community Housing and Land Trust to calculate the resale price of a CLT home, but then requires this price to be approved by municipal staff prior to sale. Other cities, such as **Portland OR** and **Boulder CO**, take a middle course. They do not review and approve the eligibility of each applicant prior to the resale of a CLT home, nor do they approve each resale price. Rather they require the CLT to provide an annual report documenting the income of each buyer and the formula-determined resale price after the fact. Similarly, the City of **Minneapolis MN** requires the City of Lakes CLT to submit an annual report describing Low Income Unit sales, resales, buyer demographics and other information requested by the City.

Innovative Practice: Back up notice to city

The Model CLT ground lease requires homeowners to notify the CLT whenever they decide to resell their home. The lease also gives the CLT a preemptive option for a period of time to purchase the home for the formula price. Once this notice is received, the CLT typically has 45 days to indicate whether it will exercise its option and then purchase the home or assign the option to an income-eligible homebuyer. Some municipalities, fearing the CLT might fail to act during this critical period, have suggested that perhaps the CLT's homeowners should be required to notify the municipality, as well as the CLT, of their intent to sell. A better solution has been developed by the City of Santa Monica CA. Santa Monica requires the owners of CLT homes to notify the city of their intent to sell and to offer the city an option to purchase their homes at the formula-determined price – but only in the unlikely event that the CLT fails to respond to the first intent-to-sell notice submitted by the homeowner to the CLT. Municipal staff are thus freed from the burden of receiving routine notices they do not need to act upon, but they are still able to step in and take effective action to preserve the affordability of CLT homes if the CLT falters or fails.

Monitoring and Enforcing Homeowner Compliance with the CLT Lease

One of the advantages of working with a CLT, from a municipality's perspective, is that CLT employees rather than municipal employees assume long-term responsibility for monitoring and enforcing the municipality's requirements for the continuing occupancy and affordability of publicly-assisted, privately-owned homes. Handing off this responsibility to the CLT, municipal officials are less likely to retain a direct relationship with the owner-occupants of these resale-restricted homes. The municipality can still regulate the CLT's homeowners *indirectly*, however, through its review of the CLT ground lease and through its oversight of the CLT itself.

CLT ground leases contain restrictions and requirements designed to ensure that homes are used in ways that are consistent with the goals of a municipality's affordable homeownership program, including prohibitions on absentee ownership, restrictions on subletting, and requirements for complying with local zoning and building codes, maintaining adequate property insurance, and keeping the home properly maintained. Some of these restrictions are unique to the CLT, but most are the same kinds of requirements that a local government would typically impose on any homebuyer receiving municipal assistance. It behooves a municipality to review both the ground lease a CLT proposes to use in any project subsidized with municipal funds and the CLT's capacity to monitor and enforce its homeowners' compliance with the terms of that lease.

All CLT ground leases specify the conditions under which a homeowner may be declared in default of the lease by the CLT, as well as the process the CLT must follow in either compelling the homeowner to cure the default, curing the default itself, or terminating the lease. The principal grounds for default spelled out in most ground leases are the following:

- Failure to pay the monthly ground lease fee
- Failure to occupy the unit as a primary residence
- Sale or attempted sale of the unit to an ineligible household or selling for more than the formula price
- Failure to maintain the unit
- Failure to pay property taxes
- Failure to carry sufficient property insurance

The CLT ground lease becomes the primary contractual tool for ensuring homeowner performance. In most cases, homeowners who violate the terms of their ground lease move quickly to remedy the situation once the CLT notifies them of the violation. When homeowners do not act to cure these violations, however, the CLT has several enforcement options, including:

Right to Charge Additional Ground Rent: When homeowners fail to pay insurance, taxes, homeowner association fees or other special assessments, the ground lease can give the CLT the right to make such payments on their behalf and to bill the homeowner. These charges can be treated as “additional rent” under the terms of the lease and, ultimately, can be withheld from the homeowner’s equity from the resale of the home or can be reimbursed out of the proceeds from foreclosure¹⁰.

Right to Terminate Lease: Homeowners who have violated a provision of the ground lease and do not correct the problem within a reasonable period of time, could have their lease terminated. Termination of the ground lease ends a homeowner’s right to occupy the CLT’s land. Termination is hardly the preferred course of action for a CLT, of course, but this endgame option usually gives the CLT sufficient leverage to compel compliance. It is worth noting that most mortgage lenders consider a default under the ground lease to be a violation of the mortgage as well. The model CLT ground lease requires the CLT to delay termination of the ground lease long enough for the mortgage lender to pursue foreclosure first.

Maintaining CLT Homes

For permanently affordable homes to continue to meet the housing needs of future generations of homeowners, these units must be properly maintained over time and perhaps improved periodically to keep up with changing standards. But there is no evidence to support the proposition that homeowners in resale-restricted housing do a poorer job of maintaining their housing. When maintenance problems go

¹⁰ Many CLT leases contain this type of provision. Unfortunately, the 2002 model CLT lease does not allow CLTs to treat insurance and homeowner association fees in this way. Future versions of the CLT model lease will include this provision.

unresolved, it is usually because of the limited and precarious income of the owners, not the limited-equity restrictions on the owners' homes. This is not a problem confined to CLT housing. A recent study by NeighborWorks America found that low-income and moderate-income owners of *market-rate* homes, purchased with the assistance of a NeighborWorks affiliate, had serious maintenance issues. Among these first-time homeowners, 56% had encountered maintenance problems that were unexpected, but nearly half of these owners of market-rate homes were unable to make the necessary repairs, even when roofs and foundations needed major improvements.¹¹

The municipality has a real interest in making sure that homes are maintained over time and some specifically require that the CLT take steps to ensure that the properties are adequately maintained. A CLT can play four important roles in helping to promote proper maintenance:

1. **Educating homeowners about maintenance:** Many CLTs offer workshops and print material to educate first-time homeowners about making simple repairs and performing ongoing maintenance on their homes. Some offer home maintenance schedules customized to the type of homes that the CLT sells.
2. **Monitoring and enforcement of maintenance provisions in the ground lease:** CLT ground leases generally require homeowners to maintain their homes and to comply with local building and health and safety codes. Homeowners who violate these provisions can be forced to make repairs or through eviction or threat of eviction can be forced to sell their homes. However, most CLTs have chosen not to perform regular inspections of individual homes because owners often feel that this violates their right to privacy.
3. **Facilitating financing of maintenance and improvements:** The CLT can also work with local lenders to ensure that CLT homeowners have access to home equity loans and lines of credit to pay for maintenance and improvements. While owners can only accumulate mortgage debt up to

¹¹ Saegert, Susan, Francine Justa, and Gary Winkel, *Successes of Homeowner Education and Emerging Challenges*, New York: Housing Environments Research Group, Center for Human Environments, City University of New York Graduate Center. 2005.

their limited resale price, many (though not all) CLT resale pricing formulas allow homeowners to receive an increased resale price to reflect significant improvements that the homeowner has made with prior approval from the CLT.

4. **Coordinating rehabilitation at resale, if necessary:** While most owners will take appropriate steps to maintain their homes, it is inevitable that some units that come up for resale will require significant rehabilitation. In these cases, the CLTs can step in at the time of resale and coordinate renovations or upgrades as part of the resale process. The CLT will generally perform a physical inspection as soon as a homeowner notifies the CLT of their desire to sell their home. When a unit has suffered from deferred maintenance, the CLT's resale formula may allow it to deduct the cost of repairs from the proceeds due to the seller. Other times, older units have been well maintained but are simply dated and in need of improvement and the CLT may perform the needed work and increase the sales price to the new buyer. In either situation, the CLT plays an important role balancing the need for ongoing investment in the building against the need to ensure ongoing affordability.

With each of these four strategies, the CLT's success in preserving the quality of its homes will be dependant on the CLT's overall organizational capacity. Understaffed CLTs will have a harder time monitoring and compelling good maintenance. Stronger CLTs, with greater capacity and deeper pockets often do a better job.

Innovative Practice: Capital Reserve Funds

A small but growing number of CLTs set aside funds on an ongoing basis to enable the CLT to make capital improvements or to replace major systems, either during the homeowner's tenure or when units turn over. Many CLT resale formulas require CLT homeowners to pay for deferred maintenance or excessive damage at the time of sale, if there are upgrades needed to protect the use value and exchange value of the properties that don't fall into this category. When a roof needs replacement, for instance, before a CLT home can be resold, it is unfair to require a seller who may have lived in the home for only five years to pay the full cost of replacement. Other times, the CLT may feel that upgrades to an older unit that is not being resold are immediately necessary to keep it livable and marketable. A reserve fund

allows the CLT to invest in these necessary improvements, without wiping out the savings of the current homeowner and without increasing the home's resale price for the next buyer. The Champlain Housing Trust, for example, deposits half of the lease re-issuance fee that is collected by the CLT at each resale into a "stewardship fund." The CLT can then access these funds for capital improvements or major repairs to CHT homes. OPAL is another CLT that has established reserves for maintaining its resale-restricted homes, but instead of capitalizing these reserves through funds collected at resale, OPAL deposits a portion of each monthly lease fee into a maintenance reserve. Similarly, the Michigan State Housing Development Authority, requires all of the CLTs they finance to charge ground lease fees that are high enough to allow each CLT to set aside at least \$25 per month in a capital reserve fund. The CLTs can later use these funds to rehabilitate units before resale. The Agency also allows CLTs to use these reserves to preserve the affordability of a unit or to prevent foreclosure. MSHDA recognizes that increased ground lease fees slightly increase the amount of subsidy necessary to make each unit affordable and they also allow an up-front initial reserve deposit of \$1,500 to be charged as a development cost when the unit is first built. MSHDA actually increases the amount of the subsidy to an amount equal to the reduction in the homebuyer's mortgage.

Preventing Foreclosures

Perhaps the most serious homeowner violation is mortgage default. When a homeowner defaults on his/her first mortgage, the CLT generally faces a real risk of loss of affordability. Most lenders require the CLT's ground lease to allow the lender to sell the home for whatever price they can get for it and to any willing buyer regardless of income after a foreclosure¹².

Many CLTs across the country have negotiated agreements with home mortgage lenders that offer the CLT an opportunity to act to preserve affordability when

¹² In communities where affordable prices are well below the unrestricted market value for similar homes, allowing lenders to resell a foreclosed CLT home without restrictions on occupancy or affordability gives the lender far more security than they should need. As long as the lender's mortgage is for significantly less than the restricted price, lenders should be able to recapture their costs without violating the resale restrictions. A number of CLTs have been working to convince the lending community to commit to resale controls that survive foreclosure but, until the practice is far more widespread, neither CLTs nor jurisdictions should strictly require this. Homeowners need access to a wide range of competitive mortgage products and it is possible to protect the public interest even when lenders may ultimately have a fallback right to sell units for more than the restricted price.

homeowners default on their loans, while preserving the lender's right to sell a foreclosed home for more than the restricted price if the CLT fails to act. Affirming the value of the CLT model and recognizing the need for a standard set of procedures, Fannie Mae has developed a uniform *Community Land Trust Ground Lease Rider* which outlines rights for the CLT and the mortgage lender.¹³ The Fannie Mae rider gives the mortgage lender very strong security while, at the same time, reiterating a significant set of "rights" contained in the CLT model lease that should allow CLTs to preserve the affordability of homes facing foreclosure under most circumstances¹⁴. The Fannie Mae Rider and model lease expect the mortgage lender to offer the CLT the following "rights" in the event of homeowner mortgage default:

- ◆ **Receive Notice:** The homeowner is required to immediately provide notice of an Event of Default to the CLT, including copies of all notices the homeowner received from the lender¹⁵.
- ◆ **Opportunity to Cure Default:** The CLT has the right, but not the obligation, to cure the default on behalf of the homeowner.
- ◆ **Option to Purchase the Home:** If the default is not cured and the mortgagee forecloses and takes title to the home, the CLT has the option to purchase the home for the amount still outstanding on the mortgage plus the mortgagee's costs. The lender is required to provide notice to the CLT within 60 days of taking title to the property.¹⁶

¹³ A copy of the Fannie Mae Rider (Form 2100) can be found at www.burlingtonassociates.com/resources.

¹⁴ These are some of the same rights – but not all of the rights – that a CLT has under the "standard permitted mortgage," as defined in the model CLT ground lease.

¹⁵ In 2006 Fannie Mae agreed to allow CLTs to require mortgage lenders to provide direct notice to the CLT when a homeowner defaults on their mortgage. What is missing from this arrangement, however, which CLTs are still urging Fannie Mae to require, is a multi-party agreement, to be executed at closing, that would spell out the willingness of all parties (private lender, public funder, CLT, and homebuyer) to recognize the rights of all the other parties with a financial stake in the property. Even without Fannie Mae's endorsement, CLTs and their municipal partners are beginning to make use of such multi-party recognition agreements to make sure that everyone will be on the same page should any party default on its obligations.

¹⁶ In states that use a Deed of Trust, instead of a mortgage in financing owner-occupied homes, the mortgagee does not actually take title when a home is foreclosed. The foreclosed home goes straight to sale "on the courthouse steps." When this happens, there is no option for the CLT to purchase the home except as a bidder at the courthouse auction.

It should be noted that the CLT is granted another right in the ground lease that has proven invaluable in dealing with foreclosures. The ground lease allows the CLT to increase the ground lease fee in the event of foreclosure or assignment of deed in lieu of foreclosure. If the CLT fails to cure a mortgage default and the lender takes title to the foreclosed home, the resale restrictions disappear, although the ground lease remains in effect. The lender has the right to sell the home to an ineligible household for any price the market will bear. Should that happen, however, the CLT has the right to increase the ground lease fee to the level of fair market rent for the land. This places the CLT in a strong position to persuade the lender to sell the home to the CLT or to persuade the subsequent owner to agree to reinstate the resale restrictions in return for lower ground rent.

IV. Default

The development of affordable housing and the revitalization of deteriorated neighborhoods are high-risk endeavors. Every publicly-funded organization, whether nonprofit or for-profit, that is engaged these activities is likely to face a life-threatening problem at some point in its history. Sooner or later, there will be a carefully conceived project that never gets built, well-meaning homeowners who fall behind on their mortgage payments, or a well-staffed organization that suddenly finds itself without the leadership to survive the loss of a major donor, the cutback in a federal program, or a change in municipal priorities. CLTs are not immune to such risks.

If the resale-restricted, owner-occupied homes of a CLT are to remain affordable, the CLT itself must remain viable, actively engaged in meeting its continuing responsibilities for the stewardship of this housing. What if the CLT no longer has the capacity or commitment to carry out these responsibilities, however? What if the CLT dissolves? This has rarely happened, but CLTs have been around for a relatively short time. A prudent municipality must plan for the worst, preparing for the possibility that a local CLT may someday falter or fail.

There are four types of organizational failure for which contingency planning should be considered:

1. the failure of a CLT to enforce the occupancy and maintenance provisions in its own ground lease;
2. the failure of a CLT to enforce the resale restrictions in its ground lease;
3. the sale of publicly-donated or publicly-funded land from the CLT's portfolio or the sale of (reacquired) improvements by the CLT for purposes other than those for which they were subsidized; or
4. the corporate dissolution of the CLT.

Failure to Act in Protecting the Occupancy and Condition of CLT Homes

The municipality is relying on the CLT to ensure that homes remain owner-occupied and stay in good repair. CLT homeowners are also expected to pay their taxes, comply with local zoning and building codes, and carry insurance on their homes. Some municipalities build these expectations into their loan or grant agreements. In these cases, a CLT that fails to monitor occupancy, to force necessary repairs, or to compel homeowners to pay their property taxes would be in default of its contractual obligations to the municipality.

Failure to Act in Preserving the Affordability of CLT Homes

The CLT is also responsible for ensuring that homes are resold only to income-eligible buyers for the formula-determined price specified in the CLT's ground lease. A CLT that allows municipally-assisted homes to resell for *more* than the formula price or that allows them to be bought by households earning *more* than the eligibility standard set by the municipality has usually committed a serious violation of the grant agreement or loan agreement covering the municipality's investment.

Sale of the CLT's Land

CLTs generally buy land with the intention of holding it forever, never reselling it. When a municipality donates land to a CLT or provides project subsidies to help a CLT to purchase land, the municipality has a reasonable expectation that the CLT will continue to own that land, at least through the term of any loan or grant agreement. Some municipalities either prohibit the CLT from selling its land or allow a sale or transfer only to another nonprofit organization with a similar mission. The City of **Santa Monica CA**, for example, has reserved the right to select the recipient organization of any lands sold by the local CLT and can set the price of

any resold land. Other municipalities have required the CLT to offer land to the municipality before selling it on the open market.

Dissolution of the CLT

At some point in the future, a CLT could experience problems so severe that the organization's leaders would have no choice but to dissolve the corporation.¹⁷ Failure of the organization would not necessarily jeopardize the residential security or the continued affordability of the CLT's publicly subsidized homes, however. Under the terms of virtually all CLT ground leases, the sale or transfer of a CLT's land, whether voluntarily or involuntarily, does not disturb the lease. Its provisions, protecting the leaseholder's security and the home's affordability remain binding and unaffected.¹⁸ Some municipal sponsors of CLTs, moreover, have required the CLT, in the event of dissolution, to transfer its land to another nonprofit with an affordable housing mission – or to the municipality itself.

V. Enforcement

There are a great many different legal structures that are used to protect a municipality's interests in a CLT project. Important differences among the laws of various states mean there is not one best approach that will be appropriate nationwide. In addition, the preferences and experiences of local city attorneys, variations among the legal documents used by municipalities in their other housing programs, and differences in the dollar value of local housing subsidies being protected lead to greater variety in the documents regulating the city-CLT relationship. And while these agreements will tend to look very similar in most respects, they can differ quite a bit in the enforcement options that they offer to the municipality in the event of CLT default. The most common approaches include:

¹⁷ Since 1970, only 13 CLTs in the United States that reached the point of holding land are known to have actually dissolved. See the list and assessment of the nation's CLTs (1970-2007) posted at: www.burlingtonassociates.com

¹⁸ Note, however, that a contract to transfer a CLT's land to any entity other than a nonprofit corporation, charitable trust, or governmental entity gives the lessee a right of first refusal, under Section 3.3 of the model lease, allowing the homeowner to purchase the "leased premises" from the CLT.

Grant with No Remedy for Failure

Some jurisdictions make relatively small grants to a CLT without imposing significant remedy provisions. The grant agreement will state the jurisdiction's expectations in very general terms, but make no explicit mention of what should happen if the CLT fails to meet those expectations.

Grant with Repayment Provisions

More commonly, municipal grants for CLT projects will contain a provision stating that if the CLT fails to meet its obligations the CLT must repay the funds. This kind of provision is required, in fact, whenever a jurisdiction invests federal funds from the HOME program. Repayment requirements function mainly as a threat to motivate the CLT's compliance with performance standards set by federal, state, or municipal rules. Except for cases where funds have been granted for a project that does not get built, a CLT that fails is not likely to be in any position to repay granted funds.

Grant Secured with Covenants

Some jurisdictions provide grants to a CLT for project development and record a covenant, a deed restriction, or a development agreement against the CLT's land. Unlike a covenant recorded against an individual house, townhouse, or condominium, which regulates the homebuyer, a covenant on the land imposes requirements directly on the CLT. This kind of covenant typically references the terms and conditions of the municipality's grant agreement and is recorded in the land records. Such a covenant would make it difficult for the CLT to sell homes that are located on the encumbered land, should the CLT fall out of compliance with specific terms of the grant agreement. The covenant also allows the municipality to take the CLT to court in order to enforce compliance.

Loan with Repayment Provisions

Many municipalities structure their project subsidies as loans. Typically these loans require no ongoing payments and are ultimately forgiven if the CLT performs all of its obligations for some specified period of time. (The 15-year affordability period required by the federal HOME program is a common example.) In this case, the subsidy functions like a grant, since the funds are

“free” to the project. Unlike a grant, the jurisdiction will typically record a lien on the CLT’s land as security for the loan. If the CLT performs its role effectively, the loan is eventually forgiven and the lien released. If the CLT fails to protect the affordability of the assisted homes, fails to enforce other terms of the ground lease, or otherwise defaults on the terms spelled out in the loan agreement, however, the municipality can require repayment of the loan and could, ultimately, foreclose on the loan . The City of **Bellingham WA**, for example, can call its entire loan due in the event that the Kulshan CLT is in default under any terms of its municipal loan. Similarly the City of **Cleveland OH** can demand repayment of loan proceeds in the event of any default by the Cuyahoga CLT. Cleveland’s loan agreement also explicitly states that foreclosure by the City will not alter the rights of the CLT’s homeowners under the ground lease.

Loan with Covenants

A mortgage or deed of trust recorded against the CLT’s land puts a municipality in a strong position to require repayment by the CLT of any municipal subsidy, but it may not be the best way to protect the ongoing affordability of CLT homes. In many states, property in foreclosure is sold by the court and, though the municipality would receive the proceeds (up to their loan amount), the municipality may not be able to control who the buyer would be. In most cases, the municipality would rather the land *not* be sold, preferring instead for the CLT to comply with specific provisions for occupancy, eligibility, affordability, etc.¹⁹

If a municipality is investing in a project with the expectation that the homes will remain both owner-occupied and affordably priced for the long-term, the municipality has more at stake than merely its initial investment. Over time the social value of that publicly-assisted housing unit will rise far above the dollar value of the initial subsidy. If the CLT fails to protect the occupancy and affordability of the unit, the social cost of losing that unit to the market is quite high. For this reason, some municipalities ensure that the CLT’s

¹⁹ Even when a municipality would prefer to see the land transferred from the CLT to another compatible nonprofit organization, it is often preferable for this transfer to take place outside of the foreclosure process.

obligations cannot be extinguished merely by repaying the loan. Rather than requiring repayment, therefore, the city or county may prefer to be in a position to enforce what is called “specific performance.” At the municipality’s request, a court could require the CLT to enforce specific terms of its own lease or to make property tax or insurance payments for particular homes assisted by the municipality. The specifics of this legal process can differ quite a bit from one state to another. In some states, even when the municipality has recorded a mortgage or deed of trust, a deed restriction (or covenant) must also be recorded in order to give the municipality the broadest ability to compel the CLT to act in protecting the occupancy and affordability of a municipally-assisted property.

Loan with Purchase Option

The City of **Santa Monica** has developed a regulatory agreement and loan agreement to be recorded against two upcoming CLT projects which gives this California city an option to purchase the CLT’s land if:

- (1) the CLT attempts to transfer its interest in the Property in violation of this Agreement or
- (2) the CLT defaults on its obligations under this Regulatory Agreement relating to owner occupancy and resale of the Townhomes or
- (3) the owner of a Townhome repeatedly or seriously violates the terms of its ground lease and Land Trust fails to terminate that ground lease in accordance with its terms, and Land Trust fails to cure such default within the time periods provided.”

The City has the right to assign this option to another nonprofit housing organization and must pay no more than the outstanding debt on the CLT’s land (an amount equal to the initial project subsidy provided by the City). Santa Monica’s documents also clearly state that, should the City ever exercise this option, the homeowner’ leases will remain in full force and the City or new landowner will take over all of the CLT’s responsibilities.

Loans vs. grants: Protecting the city's real interests

Each of these regulatory structures has certain advantages and disadvantages. One key point of debate is whether the municipality should record a loan against the CLT land. Clearly the strongest protection for the municipality involves executing a loan agreement and recording a mortgage (or deed of trust depending on the state) and also recording a covenant, deed restriction or similar agreement. But because the loan against the land can create additional challenges for financing for the CLT homebuyer, it is worth closely considering how much extra protection this loan actually adds.

Generally, a loan secured by a mortgage or deed of trust will give the lender the option to force the sale of the land through foreclosure if the borrower defaults on its obligations. In the case of a deferred payment, forgivable municipal loan for a CLT project, the municipality would typically foreclose only after the CLT had committed a fairly serious violation of the terms of the loan agreement and had failed to take necessary steps to correct such a violation. Although its unlikely that a municipality would ever foreclose on such a loan, some municipalities find this worst-case protection reassuring. Certainly the threat of foreclosure may provide additional motivation to the CLT to comply with the terms of the loan.

Consider, however, the position of a CLT's homeowners and the private lenders from whom they are hoping to secure a mortgage. The value of a homeowner's property is dependent upon the rights conveyed through the 99-year ground lease. Were the CLT to fail and were a new landowner to take title to the land and terminate the lease, the homeowner's property would be worthless, since the home is affixed to the land. When a municipality wants to record a lien on the CLT's land, therefore, the homebuyers and their mortgage lenders need to be assured that, if the municipality were ever to foreclose on the land, the ground lease would survive and the new landowner would be bound by all of the terms of the ground lease.

To this end, Fannie Mae has developed a Uniform CLT Ground Lease Rider which was designed to protect the interests of both the homeowner and the first mortgage lender. Fannie Mae will only approve liens on a CLT's land when such liens benefit a state or local governmental entity and when there is a

nondisturbance clause with respect to the ground lease.²⁰ However, because Fannie Mae has not provided specific legal language for such an agreement, some local lenders have been reluctant to offer homeowners leasehold mortgages when there was a superior municipal lien against the CLT land.

Worst Practice: Boilerplate Municipal Loans with Superior Liens

A number of municipalities have recorded mortgages or deeds of trust against a CLT's land as security for their investment in a CLT's projects. In too many cases, municipalities have used legal documents that were originally drafted for loans on rental housing, without modifying them to reflect either the special nature of the CLT model or the important interests of homeowners and their lenders. Since these liens are generally recorded *before* the CLT ground lease, subordinating the lease to the lien, foreclosure under these loans could effectively terminate the CLT lease. The ability of a CLT's homeowner to obtain mortgage financing under these conditions is made difficult or impossible (although some mortgage lenders have failed to notice the danger a superior lien can pose to their security and have proceeded with the loan.)

Better Practice: Loan Agreement Protecting Homeowners' Interests

A municipality that is planning to donate a large tract of land or to invest a large amount of money in a CLT project wants to be in a strong position to recover its investment in the event of a CLT's failure. A well-designed loan agreement can protect the municipality's interests without jeopardizing either the homeowners' access to mortgage financing or the homeowners' security of tenure, should the CLT fail.

Best Practice: Grants Secured by Covenants

Although structuring a local government's subsidy in the form of a loan secured by the CLT's land has been made to work in some jurisdictions, a governmental lien on the land adds undesirable barriers and complications to homebuyer financing, while providing very little additional security for the municipality. Loans recorded against the CLT land also have a negative impact on the CLT's balance sheet because the loans must be listed as

²⁰ The FNMA rider does not prohibit liens on the land that are subsequent to the execution of the lease, but it does prohibit the lessor and the lessee from *subordinating* the lease to such liens.

liabilities. The land securing these loans is generally booked at a greatly reduced value, moreover, because of the CLT's long-term lease. Many CLTs and their municipal partners, therefore, have concluded that grant agreements coupled with covenants or deed restrictions can protect the municipality's interests as well as loans – with fewer problems for the CLT.

A number of municipalities have, in fact, combined grant agreements and covenants to give a municipality a range of options for curing a CLT's failures. As one example, **Orange County NC** provided housing bond funds and HOME funds to the Orange Community Housing and Land Trust (OCHLT) for a 32-unit development in Chapel Hill, NC. Orange County and OCHLT executed both a Development Agreement outlining OCHLT's project development responsibilities and a Grant Agreement spelling out the CLT's long-term obligations in maintaining the occupancy and affordability of these units. The County then required OCHLT to record a Declaration of Restrictive Covenants which secures performance of the requirements of the other two documents, requires OCHLT to preserve affordability of the units through a 99-year ground lease, and declares both the County and the Town of Chapel Hill to be "third party beneficiaries of and successors to each and every remedy intended to insure the long term affordability of the housing" The Declaration further stipulates that :

"each may, in the event of the failure or default of the Lessor in each such ground lease to insure the long term affordability of the housing unit as provided for in the ground lease, exercise all rights and remedies available to the Lessor in the ground lease for that purpose."

Other municipalities have incorporated similar rights to intervene in their own grant agreements and covenants. The common goal here is to give the municipality the opportunity and authority to do more than simply require repayment of a municipality's money. The municipality needs to be able to take direct action to protect the security and affordability of the homes created with the municipality's assistance.

Appendix A

Sample Performance Standards

Municipal support for a CLT's projects is always offered with the expectation that the project will provide certain community benefits and will be built, marketed, and managed in a certain way. Some municipalities are both comprehensive and specific in spelling out what the CLT must do with the municipality's contribution and how the CLT must perform in completing and monitoring assisted projects. Other municipalities are quite general, granting the CLT wide leeway in the use of public funds for residential (or commercial) development. The performance standards that are listed below are ***not*** intended to be a recommendation for how CLTs ***ought*** to be regulated. This is a compilation of the most common requirements that are sometimes imposed on a CLT as a condition of receiving municipal support. Rarely does a municipality include all of them in the grant agreements, loan agreements, or other legal documents that accompany the investment of public funds in a CLT project.

Performance Standard

Acquisition: The municipality's contribution must be used by the CLT to acquire land for the development of affordable housing.

Construction and Pricing: The CLT is required to construct or rehabilitate housing to the municipality's specifications and then sell the housing for a price affordable to the targeted population..

Marketing Plan: The CLT is required to develop an affirmative fair marketing plan for the project and not begin any marketing any homes until the municipality has approved this plan.

Marketing Process: The CLT is required to market available units to the entire community through a fair and transparent process consistent with the approved marketing plan.

Income Verification: The CLT is required to sell the housing unit to a household that meets eligibility requirements approved in advance by the municipality. To this end,

the CLT is required to determine and document the annual income of prospective buyers.

Homebuyer Education: The CLT is required to provide homebuyer education to prospective homebuyers, including full disclosure of terms and conditions of the ground lease and resale restrictions.

Homebuyer Selection: The CLT must sell the assisted home to a household that meets the eligibility criteria set by the municipality.

Financing: The CLT must review mortgage documents to ensure that buyer financing meets the jurisdiction's conditions, especially notice provisions and affordability protections in the event of foreclosure.

Lease Provisions: The CLT must enter into a 99-year land lease with homebuyers using a form of lease approved by the municipality.

Monitoring Use: The CLT must monitor and enforce the provisions of the municipally approved land lease, ensuring that:

- The home is used only for residential purposes.
- The home is the permanent residence of the owner.
- The owner maintains required insurance.
- The owner pays all property taxes.
- The home is properly maintained.
- Post-purchase capital improvements

Managing Resales: The CLT must manage subsequent sales of the home to income-eligible households, carrying out the following tasks:

- Receiving notice from homeowners of their intent to sell
- Responding to sellers within the timelines outlined in the ground lease.
- Providing notice to the municipality (if required) of a homeowner's intent to sell.
- Calculating the formula-determined resale price according to the homeowner's ground lease.
- Marketing the home to subsequent buyers according to the provisions listed under 'marketing' above.
- Assigning the CLT's purchase option to a homebuyer who meets approved eligibility criteria.

- Coordinating the transfer of ownership from one homeowner to the next for no more than the formula-determined resale price.

Preserving Affordability: The CLT must maintain the affordability of municipally-assisted homes across successive resales.

Preventing Foreclosure: The municipality may require the CLT to implement safeguards and systems to intervene in cases where a homeowner has defaulted on a mortgage and faces the threat of foreclosure from a private lender.

Reporting: The municipality may require a CLT to prepare and submit reports on municipally-assisted projects, including:

- Annual statement verifying occupancy, insurance and tax payment for all assisted units.
- Notice of receipt of a notice of intent to sell from any homeowner.
- Notice in the event of any ground lease default
- Certification that each new homebuyer meets jurisdiction approved eligibility requirement.