



# Community Land Trusts: A Primer for Local Officials

*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 homeownership for people who might otherwise be priced out of the housing market and helps stabilize communities facing gentrification or high foreclosure rates. The following primer provides information for local officials on the laws and regulations that apply to property in a CLT. These laws and regulations change the way that property is assessed for property tax purposes. However, other than land use restrictions that affect tax assessments, the policies in a CLT don't necessarily affect the applicability or enforceability of laws that govern land use and property ownership.*

## **I. Lender Issues for Consideration**

### **A. Zoning**

The development of CLT housing does not differ from the development of any other type of affordable or market-rate housing. Therefore, all applicable local zoning laws and regulations will apply. Some statutes that may apply to CLTs, depending on the type of housing provided or where housing is located within a municipality, are as follows:

- Federal Fair Housing Act, 42 U.S.C. 3604
- The Michigan Condominium Act, MCL 559.101 et. seq.
- NREPA environmental protection for wetlands, MCL 324.101 et. seq.
- Local Historic Districts Act, MCL 399.202.

### **B. Building Permits and Compliance with Municipal Codes**

The acquisition, development, and sale of CLT housing does not differ from the acquisition, development, and sale of any other type of affordable or market rate housing. Therefore, all applicable building permits and compliance with local building, safety, and other codes and regulations will apply. If the CLT is located in a city, city officials may exercise certain powers over areas in a CLT if they are blighted under the Home Rule City Act, MCL 117.4q, 117.4r. If the homes in a CLT are condominiums or mobile homes, additional land use controls may apply under MCL 559.101 et seq., esp. MCL 559.153, MCL 559.146 and the Mobile Home Commission Act (MHCA), MCL 125.2301 et seq.



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## **C. Land Division Act**

The nature of a CLT housing development does not exempt a development from compliance with the Land Division Act, MCL 560.101 et seq. Under the land Division Act, local officials may “require copies of agreements, covenants or other documents showing the manner in which areas to be reserved for the common use of the residents of the subdivision are to be maintained.” MCL 560.258. However, if the CLT housing consists of condominiums or mobile homes, the Land Division Act does not apply.

## **D. Transfer of property/Recording of Deeds**

The CLT will remain the owner of the land occupied by the CLT home. At the time of the initial sale to the CLT homeowner, the CLT will issue a warranty deed for the improvements (i.e., the home) and will execute a long term (usually 89 years), renewable ground lease with the CLT homeowner for the land on which the CLT home sits. The recorded warranty deed for the improvements will reference the ground lease and a “Memorandum of Lease” will be recorded along with the warranty deed to place the interest of the homeowner in the land of record. Among other things, this makes the homeowner’s interest financeable and insurable. Deeded restrictions and covenants are firmly enforced in Michigan law. They will override a later enacted zoning ordinance application, even if the land is rendered valueless. See, e.g., *City of Huntington Woods v City of Detroit*, 279 Mich App 603 (2008).

## **E. Taxation**

Community land trust properties are issued two tax bills. The first is to the homeowner for the value of the improvements, and the second is to the CLT for the value of the land. See *Wycoff v. Gavrilloff Motors, Inc.*, 362 Mich. 582, 585, 107 N.W.2d 820, 822 (1961). The CLT may, via the ground lease, provide that the CLT homeowner will pay the bill for the taxes on the property. The tax levied on the improvements should reflect the restricted market value of the improvements given the restrictions on resale price imposed by the CLT in the CLT ground lease. Similarly, the tax levied on the land should reflect the limitations on use or resale of the land imposed by the ground lease and the substantially below-market ground lease rentals.

A sale of the improvements will be a “transfer” of that property for purposes of Proposal A. Mich Const 1963 art 9, §3. However, because of the restrictions on transfer that apply to



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the property, the increase in taxable value resulting from the transfer should be limited in accordance with the resale formula in the ground lease. See *Lochmoor Club v. City of Grosse Pointe Woods*, 10 Mich. App. 394, (1968). The taxable value of the land will not be affected since the CLT continues as the owner.

## **F. Financing**

CLT homeowners, although purchasing the CLT home at a reduced 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.

Because all CLT programs have the purpose of promoting, or at least preserving, the availability of affordable housing, federally regulated depository institutions can expect to receive Community Reinvestment Act (CRA) credit for participation in, and financial support of, these programs.

CLT-related mortgages are increasingly accepted in secondary markets. State housing agencies are often willing to purchase them, and Federal National Mortgage Association (FNMA), commonly called Fannie Mae, offers a CLT program. The increasing acceptability of CLTs is demonstrated by the fact that Federal Housing Administration (FHA) insurance is available for CLT purchase mortgages, and financing has also become available under the Rural Services 502 program. Of course, financial institutions may hold the mortgages, instead of selling a CLT mortgage.

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 without price restrictions to retain the home's affordability. Loan workout regulations such as the Making Home Affordable Program and Regulation Z apply in the same way to CLT properties.



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## **G. Title**

The instruments used to perform the sale of CLT property are a ground lease of the land and a deed for the improvement on the land (generally, the house/structures). What will be recorded is usually a memorandum of ground lease and a warranty deed, both extending from the CLT to the CLT homeowner. The memorandum will typically set forth the restrictions on title including a reservation of mineral rights, the right to purchase retained by the CLT, the duration of the lease, and use and transfer restrictions.

As a consequence of the transaction, title to the land will continue to be held in the CLT, subject to the lessee-homeowner's leasehold interest in that land. Title to the improvements will vest in the homeowner. The homeowner's leasehold interest in the land and ownership interest in the improvements may both be given as security for a loan so a mortgage may be recorded.

A homeowner may sell his or her interest to another qualified purchaser. At that time, usually the original lease will be terminated and a new lease will be executed by the CLT and the new purchaser. The selling homeowner will also execute a deed for the improvements to the new purchaser.

The deed will recite the consideration paid for the improvements on the land and will be subject to transfer tax based on that consideration. The tax that the homeowner pays on the value of the improvements will also be uncapped at this point.

Generally, CLT transactions are insurable like other residential transactions. The primary difference is related to the nature of the ground lease. Therefore, an endorsement will be added to the both the owner's and the loan policy to reflect the nature of the interest insured as being a leasehold owner's interest or a mortgage secured by the leasehold interest in the land and the full ownership of the improvements.

## **H. Control and Accountability of the CLT Homeowner**

Leaseholders retain most of the rights 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 CLT ground leases also prohibit absentee ownership of housing. Also, CLTs want to protect the condition of the land and buildings which would be left at the end of the lease term. Courts can enforce termination of a lease and the CLT's



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reclamation of the premises if residents violate the terms of the lease.

## I. Dissolution of the CLT

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. Typically, if the CLT ever offers the land for sale to a non-charitable buyer, the CLT homeowner will have the right of first refusal to buy the land.

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