



# Community Land Trusts: A Primer for Title Insurance Companies

*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. CLT transactions, like any other residential sale or mortgage refinance, will almost certainly require title insurance. As ground leases are relatively unusual in residential transactions, it is important for title insurers to understand certain key peculiarities. The following primer, while not a legally binding document, summarizes the key issues for both owner's and lender's policies of title insurance.*

## **I. Insurable Interests**

CLT transactions are insurable just like any other residential real estate transaction. There are, however, several key differences that title insurers should closely review and understand. First and foremost, a CLT transaction is a ground lease transaction. At closing, the homeowner will be vested with fee title to the improvements (the home itself and any fixtures), as well as a leasehold estate in the land. In addition to its own underwriting guidelines, a wise title insurer will review the ground lease, together with any amendments or assignments, to understand fully the nature and scope of the homeowner's leasehold interest. In addition to the typical review of record title, the title insurer will also want to confirm that the ground lessor held fee title to the property on the date it leased the improvements to the ground lessor.

## **II. What Gets Recorded?**

At closing of the CLT transaction, the title insurer should expect and require that the parties record both a memorandum of ground lease and a warranty or covenant deed to the improvements. The memorandum of ground lease will place certain key ground lease provisions of record. For example, the lease term, use restrictions, transfer restrictions and purchase options or rights of first refusal should be in the public records. But the ground lease itself should generally not be recorded in order to avoid making confidential terms (e.g., amount of rent payable) public.

## **III. Variations in Form of Policy**

For both owners' and lenders' title insurance policies, title insurers will normally use their standard ALTA 2006 policy forms. Such policies will vary from typical residential policies in certain respects. First, item 2 of Schedule A of both policies should describe a leasehold estate by making reference to the recorded memorandum of ground lease, as well as a fee estate in all improvements



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located on the land. Second, Schedule B of both policies should include (in addition to any new mortgage and any other instruments of record) a specific exception for the CLT's fee interest in the land, as ground leased to the homeowner, pursuant to the ground lease and as evidenced by the memorandum of ground lease. Third, the insurer should include an ALTA 13-06 form endorsement on the owner's policy and an ALTA 13.1-06 form endorsement on the lender's policy. These endorsements address valuation of the insured estate for purposes of computing loss or damage in the event of a policy claim. Finally, it is worth noting that amounts of insurance should be determined in the same fashion as policies insuring pure fee interests.

## IV. Transfer Taxes

In a typical residential purchase transaction, Michigan transfer taxes (both State and County) are paid on the total value of the property (improvements and land). In a CLT transaction, however, the State transfer tax (\$3.75 per \$500 or fraction thereof) and the County transfer tax (\$0.55 per \$500 or fraction thereof) are payable on the total value of the fee interest in the improvements (and not on the value of the leasehold interest). In both statutes, written instruments evidencing leases are expressly exempt from taxation. See M.C.L. § 207.526(e) and MCL § 207.505(e). In addition, as in any other transaction, the purchase price paid should be recited on either the deed or a real estate transfer tax valuation affidavit.

## V. Real Property Taxes

CLT properties are typically issued two tax bills for real property. The first is issued to the homeowner for the value of the improvements. The second is issued to the CLT for the value of the land. But the obligation to pay property tax on the land may be shifted from the CLT to the homeowner by the terms of the ground lease. In any event, at closing the tax will likely be prorated between buyer and seller. Further, a property transfer affidavit should also be filed. Since the homeowner will be required to reside in the home by the ground lease, the homeowner should be entitled to claim the personal residence exemption and obtain homestead property tax treatment. For further discussion of property taxes and assessing issues, please see *Community Land Trusts: A Primer for Local Assessors*, elsewhere in this manual.

## VI. Estoppel Certificates

Finally, title insurers (as well as lenders) may wish to receive an estoppel certificate from the CLT (as ground lessor) which indicates that the ground lease is in full force and effect, attaches a complete copy of lease and any amendments, and certifies that the ground lessee is in compliance with the lease and not in default. Moreover, if a loan policy is requested and if ground lessor consent



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is required to permit the mortgage, the estoppel might include an express consent to the mortgage. The right to request such an estoppel may be included within the ground lease itself.

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