



Free Enterprise
Forum

We the People

COMMUNITY LAND TRUSTS: Redefining Real Property Ownership in America

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Preface

The Free Enterprise Forum is proud to present this white paper on Community Land Trusts. It is part of the Forum's efforts to offer well researched, objective studies to help build a set of shared facts from which we can start the community discussion.

The Free Enterprise Forum is a privately funded non profit public policy organization focused on local government in the Charlottesville area (Albemarle, Charlottesville, Greene, Fluvanna and Nelson). In addition to research, we publish regular reports and commentary concerning land use and other local government action. When appropriate we notify those individuals and businesses of pending government action that may impact their livelihoods.

“Community Land Trusts: Redefining Real Property Ownership in America” was written and researched by Free Enterprise Forum Field Officer Kara L. Reese. Ms. Reese's legal background and her determined research generated a well documented, balanced review of Community Land Trusts in the nation.

“Community Land Trusts: Redefining Real Property Ownership in America” is being made available to our region's elected leaders, business leaders, and the media in order to assist them in better understanding this new concept of home ownership. The report provides significant examples of the potential benefits and pitfalls of a Community Land Trust.

Affordable housing is an important issue for all of the localities where the Free Enterprise Forum operates. Community Land Trusts may or may not be a part of the solution to the affordable housing issue. Nothing in this report should be construed as supporting or opposing any proposed legislation. The Free Enterprise Forum will provide such opinions as the initiatives become further developed. Our goal with this independent research is to reach out to the community and start this important discussion.

Respectfully submitted,

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President and Executive Director
The Free Enterprise Forum
October 2008

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Despite the current decline in the real estate market, housing affordability continues to be a hot issue in many communities where housing prices have exceeded wage increases.

Charlottesville, Virginia and its surrounding areas are no exception to these trends. As Free Enterprise Forum noted in its 2006 Report, “Locked Out,” the average home price in Charlottesville and surrounding counties increased 133% between 1995 and 2005.¹

In order to address these issues, a few communities are exploring community land trusts (CLTs). Albemarle County and Charlottesville have recently joined the ranks of communities considering the community land trust model of affordable housing. In May of 2008, the Thomas Jefferson Planning District Commission adopted a resolution supporting “the formation of the Thomas Jefferson Community Land Trust as a mechanism for perpetual affordability of housing on land owned and controlled by the land trust.”²

Community land trusts are a unique form of property ownership that challenge traditional concepts of property ownership in the United States. The concept is still unfamiliar to many citizens. The purpose of this paper is to provide an overview of the community land trust model and its use in the United States. Section I of this paper will provide a basic definition and history of the community land trust model. Section II will briefly explore where community land trusts are in operation today. Section III analyzes many of the elements that comprise the traditional community land trust. And finally, Section IV summarizes many of the policy arguments advocates on both sides of the CLT issue are utilizing.

Free Enterprise Forum’s purpose in providing an overview of community land trusts is to encourage citizens of Charlottesville and surrounding areas to engage in an informed community-wide debate regarding the future of a community land trust in Charlottesville. The Free Enterprise Forum is a privately funded public policy think tank focused on local government. Our work is supported by the generous donations from associations, individuals and businesses. For more information about the Free Enterprise Forum visit www.freeenterpriseforum.org.

¹ Natasha Sienitsky, *Locked Out: The Impact of Regulation on Affordable Housing 2* (2006) at www.freeenterpriseforum.org/research.php.

² *Resolution for the Thomas Jefferson Community Land Trust* (adopted May 1, 2008) at http://www.tjpd.com/agendas_and_minutes/pdc/08_06_05/8b%20CLT%20Resolution.pdf

I. An Introduction to Community Land Trusts.

The community land trust is an innovative form of property ownership that has the potential to reshape the face of American real property rights. A community land trust is a system of property ownership where a non-profit organization acting as trustee holds legal title to the land but sells the home or improvements located on its land to income qualified buyers. The underlying land is then leased to the homeowner. The cost of purchasing land is removed or at least minimized, thus reducing the cost of the home. In exchange for the privilege of purchasing a home at a cost below market prices, the homeowner's return on the investment will be limited by a resale formula. In most instances, the CLT retains an option to repurchase a home if it is offered for sale, allowing even greater control of the resale process.

Community land trusts are often referred to as "third sector housing." Third sector housing is a term applied to "nonprofit housing designed to meet public and social needs" that does not meet traditional definitions and ideas regarding property ownership.³ The CLT is just one of many types of third sector housing including "nonprofit rentals, mutual housing associations, limited equity (and zero equity) cooperatives, [and] limited equity condominiums."⁴

The community land trust model has a flexible structure and numerous variables which can be altered to meet specific goals. For example, instead of focusing on homeownership as a goal, a few community land trusts also choose to include rental properties as part of their portfolios. Likewise while many community land trusts serve low to moderate income buyers, the model could theoretically be applied to high income purchasers as well.

Although this paper is primarily concerned with the application of the community land trust model to housing markets, it should also be noted that the CLT model doesn't necessarily need be applied to homeownership.⁵ It was originally envisioned that entire towns including businesses, schools and public recreation areas, as well as housing, would be built utilizing the community land trust model.⁶ Community land trusts may also engage in other functions such as

³ Tom Peterson, *Community Land Trust an Introduction*. 23 PLAN. COMMISSION J. (1996) available at <http://www.plannersweb.com/articles/pet112.html>

⁴ John E. Davis & Amy Demetrowitz, *Permanently Affordable Homeownership: Does the Community Land Trust Deliver on Its Promises?* 4 (Burlington Community Land Trust) (2003) available at <http://www.bclt.net/newsandpubs.shtml>

⁵ International Independent Institute, *The Community Land Trust: A Guide to a New Model for Land Tenure in America*. (Center for Community Economic Development) (1972).

⁶ *Id.* at 2.

financial counseling and job training.⁷ Others may focus on preserving open land within the community, creating community gardens or other conservation activities.⁸

⁷ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *A National Study of Community Land Trusts*. 23 (Lincoln Institute of Land Policy Working Paper) (2007) available at <http://www.lincolninst.edu/pubs/default.aspx>.

⁸ *Id.* at 24

II. The Modern Community Land Trust Movement

A. Origins of the Community Land Trust Model

Robert S. Swan and his colleagues at the International Independence Institute are credited with establishing the community land trust movement in the United States.⁹ The International Independence Institute first published “The Community Land Trust: A Guide to a New Model for Land Tenure” in 1972.¹⁰ Swan defined a community land trust as “a legal entity, quasi-public body, chartered to hold land in stewardship for all mankind present and future while protecting the legitimate use-rights of its residents.”¹¹ Early advancement of the community land trust model focused on the “social and economic reconstruction of America.”¹² Swan proposed CLTs as means of achieving these goals.

Swan was motivated by historical examples of community land ownership such as the Native American concept that land could not be possessed by individuals but belonged to everyone.¹³ Swan was also inspired by the Indian notion of Gramand (“village gift”) where individual villages held land in trust while granting the right to use the land to individuals.¹⁴ A third source of inspiration for Swan was the Jewish National Fund (JNF). The International Independence Institute utilized many of JNF’s legal documents as a foundation for their own community land trust New Communities Inc.¹⁵

The Jewish National Fund was founded in 1901 with the express purpose to purchase land for the creation of a Jewish State. From its inception it was intended that “the fund shall be the property of the Jewish people as a whole.”¹⁶ JNF used donations to acquire land which would be allotted to settlers in Israel by inheritable leasehold.¹⁷ In 1904 the fund purchased its first property.¹⁸ Today, approximately 80% of Israelis live on land acquired by JNF.¹⁹

⁹ Homestead Dallas. *A Primer on Community Land Trusts*, available at <http://homesteaddallas.com/CLTPrime.aspx>; see also John E. Davis, *Starting a Community Land Trust: Organizational and Operational Choices* (2007) available at <http://www.burlingtonassociates.com/resources/archives/1%20The%20Diverse%20World%20of%20CLTs%20107.pdf>

¹⁰ John E. Davis *supra* note 9 at 2.

¹¹ International Independent Institute, *supra* note 5 at 1.

¹² *Id.* at i.

¹³ *Id.* at xiii.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 16.

¹⁶ Jewish National Fund, *History*, available at <http://www.jnf.org/site/PageServer?pagename=history>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Mel Salberg, *The Jewish National Fund*. The Jewish Virtual Library at <http://www.jewishvirtuallibrary.org/jsource/Orgs/jnf.html>

The International Independence Institute and its research provided the foundation for the community land trust. The International Independence Institute's mission has been assumed by its successor the Institute for Community Economics (ICE).²⁰ As a leader in the community land trust movement the ICE provides numerous print resources for use in creating a community land trust as well as other forms of support to developing CLT's.

B. Growth of the Community Land Trust Model

Awareness of community land trust concept has increased since Swan introduced it in 1972. In the 1980s there were less than 10 community land trusts in the United States.²¹ Today the number of CLT's is nearing 200.²² Community land trusts can be found throughout the United States as well as in Canada and the United Kingdom. They are in use in 35 States and the District of Columbia.²³ A 2006 study estimated the number of known U.S. CLT's at 186.²⁴ According to that same 2006 study, the regional breakdown of CLT's is roughly 37% in the Northeast, 29% in the West, 19% in the Midwest and 15% in the South.²⁵ States with community land trusts are diverse and include California, Indiana, Wyoming, Georgia, New York, and Vermont as just a few examples.²⁶ The map below illustrates the national distribution of community land trusts.

²⁰ John E. Davis *supra* note 9 at 2.

²¹ Amy Green, *One Path to Affordable Housing: You Own the House, But a Trust Owns the Land*. CHRISTIAN SCIENCE MONITOR November 22, 2006 available at <http://www.csmonitor.com/2006/1122/p02s02-ussc.html>

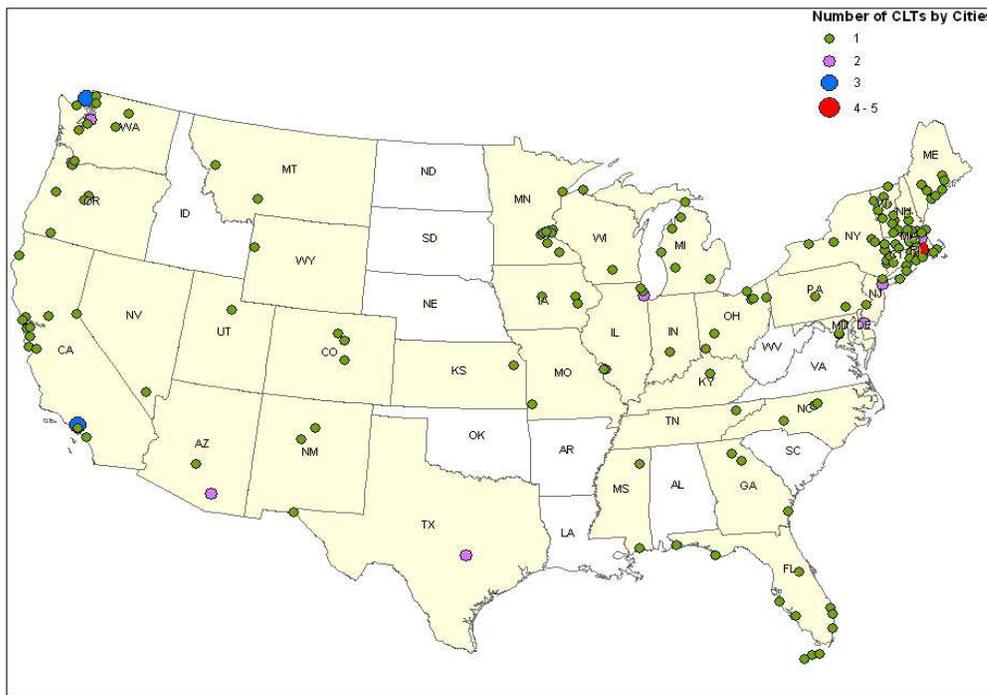
²² David Abromowitz & Roz Greenstein, *A Foreclosure-Free Option*. THE BOSTON GLOBE, Jan. 23, 2008 at A 15.

²³ Institute for Community Economics, *Community Land Trusts (CLTs) or Sponsors of CLTs*, available at <http://www.iceclt.org/clt/cltlist.html>

²⁴ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 4.

²⁵ *Id.* at 5.

²⁶ Institute for Community Economics, *Community Land Trusts (CLTs) or Sponsors of CLTs*, available at <http://www.iceclt.org/clt/cltlist.html>



2006 Locations of Community Land Trusts in the United States²⁷

Source *A National Study of Community Land Trusts*.
Lincoln Institute of Land Policy Working Paper

C. The Burlington Example

Although there are many different community land trusts models in use today the Burlington Community Land Trust (BCLT) founded in 1984 has often served as the premier example of the CLT in action. The BCLT was the first municipally-funded community land trust in the United States. Its founding principles are “[1] to increase the number of affordable homeownership opportunities for families of modest means; [2] to provide access to land and decent housing for low and moderate-income persons; and [3] to promote neighborhood preservation and improvement through the responsible use and management of land.”²⁸

The Burlington Community Land Trust is one of the few land trusts in the U.S. to have a sufficient number of resales to allow study of the resale process.²⁹ In 2002, the Burlington Land Trust conducted its own internal evaluation of its efficacy. The BCLT reported that between

²⁷ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 5.

²⁸ John E. Davis & Amy Demetrowitz, *supra* note 4 at 2.

²⁹ *Id.* at 1.

1988 and 2002, approximately 97 homes or condos had been resold.³⁰ Of the 259 homes and condos that were acquired or built during that same time period, 247 of them remained in BCLT ownership: a retention rate of 95%.³¹ The 12 units that were “lost” were all condos that were permitted to sell at market rate when a low income buyer could not be found.³²

The report also provided insight into the BCLT’s structure at that time. In 2002, it held total assets valued at \$22 million. Its operating budget was \$1.5 million. BCLT’s staff consisted of 28 people.³³ It offered more than 500 price restricted residential units.³⁴ Not all of these units were available for purchase. They included rentals, transitional and special needs housing.³⁵

In 2006, the Burlington Community Land Trust merged with Lake Champlain Housing, a nonprofit agency offering affordable rentals to become Champlain Housing Trust (CHT), the largest community land trust in the United States.³⁶ In 2007, the CHT held 1,600 rental units, 115 cooperative homes, and 430 owner occupied homes.³⁷ At the conclusion of its 2007 fiscal year on September 30, 2007, the CHT held \$41.7 million in assets.³⁸ It now has a staff of approximately 80 employees.³⁹

The newer, larger organization engages in a wide variety of activities. The CHT continues to utilize the community land trust model to develop some housing.⁴⁰ During the 2007 fiscal year, the CHT added 25 new homes to its portfolio and spent 15% of its revenues on “homeownership.”⁴¹ It also engaged in other activities such as community technical assistance (assisting communities with addressing affordable housing issues), housing co-op technical support (assisting co-op with “membership selection, application processing, training and ongoing operational support”⁴²) and resident service coordination for its rental properties.

³⁰ *Id.* at 6.

³¹ *Id.*

³² *Id.* at 14.

³³ *Id.* at 4.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Champlain Housing Trust, *Who We Are*, available at http://www.champlainhousingtrust.org/who_we_are

³⁷ Champlain Housing Trust, *Annual Report 2007*, available at http://www.champlainhousingtrust.org/assets/files/CHT%20AR%2707_rev.pdf

³⁸ *Id.*

³⁹ Champlain Housing Trust *Who We Are*, available at http://www.champlainhousingtrust.org/who_we_are.

⁴⁰ Champlain Housing Trust *What We Do*, available at http://www.champlainhousingtrust.org/what_we_do

⁴¹ Champlain Housing Trust *Annual Report 2007*, available at http://www.champlainhousingtrust.org/assets/files/CHT%20AR%2707_rev.pdf

⁴² Champlain Housing Trust *What We Do*, available at http://www.champlainhousingtrust.org/what_we_do

Champlain Housing Trust also engages in property management, which accounts for 65% of its expenses or approximately \$4.5 million dollars.⁴³

The Champlain Housing Trust is involved in three distinct types of housing. The first is approximately 400 single family homes and condominiums. Champlain Housing Trust offers homes in the Vermont counties of Chittenden, Franklin, or Grand Isle.⁴⁴ Current income maximums to purchase a home are \$49,100 for a single person, \$56,100 for a family of two and \$70,100 for a family of four.⁴⁵ Buyers may also be eligible for down payment assistance which substantially lowers their costs.⁴⁶ Homes recently advertised on the Champlain Housing Trusts' website range from \$145,000 for a condo to \$260,000 for a 3 bedroom single family home. Down payment assistance will further reduce these prices to \$80,000 and \$200,000 respectively.⁴⁷

The Champlain Housing Trust also operates 1,400 rental units. A two bedroom unit ranges in price from \$550 per month to \$975 per month.⁴⁸ Units are advertised as available to all income levels. Some units are available at reduced rates while others are rented at market rate.⁴⁹

Finally, the Champlain Housing Trust manages 6 co-ops within its service area. These co-ops have a total of 115 units. According to CHTs' website, the application can take anywhere from 3 months to a year to process depending on availability and income eligibility.⁵⁰ Members of co-ops are expected to donate 6-10 hours per month of service to the co-op.⁵¹

In early 2008, CHT broke ground on a new apartment complex which will be constructed to LEED standards. The four story building will contain office space for CHT, and 20 apartments. Of those 20 apartments, 10 will be designated for those with income under 50% of

⁴³ Champlain Housing Trust, *Annual Report 2007*. 13 available at http://www.champlainhousingtrust.org/assets/files/CHT%20AR%2707_rev.pdf

⁴⁴ Champlain Housing Trust, *Who We Are*. available at http://www.champlainhousingtrust.org/what_we_do

⁴⁵ Getahome.org *2008 Income Eligibility Guidelines*. available at <http://www.getahome.org/buy-a-home/income-eligibility-guidelines>

⁴⁶ Getahome.org *Buying a Housing Trust Home* available at <http://www.getahome.org/buy-a-home/buying-a-housing-trust-home> (visited July 15, 2008)

⁴⁷ Getahome.org *View Homes for Sale*. available at <http://www.getahome.org/buy-a-home/view-homes-for-sale> (visited July 15, 2008)

⁴⁸ *Id.*

⁴⁹ Getahome.org *Rent A Home*. available at <http://www.getahome.org/rent-a-home>

⁵⁰ Getahome.org *Cooperative Homes* available at <http://www.getahome.org/cooperative-homes/apply-for-co-op-housing-and-helpful-links> (visited July 15, 2008)

⁵¹ *Id.*

the area median income, 7 will be reserved for those with less than 60% of the area median income and the remaining 3 units will rent at market rate.⁵²

D. Other Examples of the Community Land Trust Model

Despite its size and prominence, the Burlington example does not necessarily represent the norm in community land trusts. There are many smaller community land trusts operating in communities today. A 2006 survey concluded that most community land trusts operate with very few paid staff. The mean number of paid fulltime staff was two, including the executive director.⁵³ The study discovered that nearly 90% of responding organizations had less than 100 housing units and that only 45% of CLTs had rental units.⁵⁴

The same study found that the Federal Government was the second largest funding source for CLTs as a whole, providing 15% of all funds. State and local governments combined provided another 15% of funding.⁵⁵ The study also concluded “Local governments played a major role in the formation of 36% of CLTs in the 1990s and 44% of CLTs in the 2000s.”⁵⁶

Interestingly, a separate 2002 study noted that CLTs were common in communities with or near a university.⁵⁷ While certainly not a prerequisite for hosting a CLT, a quick look at a few areas that are home to both community land trusts and a major university provides some insight into how the community land trust model translates to real numbers in various communities.

Orange County Community Housing and Land Trust serves the localities of Chapel Hill (home to the University of North Carolina), Hillsboro and Carrboro. The county has a combined population of roughly 123,000 people.⁵⁸ Orange County Community Housing and Land Trust has about 125 homes in its portfolio⁵⁹ and a staff of 6 employees.⁶⁰ Potential homeowners must make less than 80% of that area median income.⁶¹ Homes are usually sold for approximately 50 -

⁵² Champlain Housing Trust *At Home*, Champlain Housing Trust Newsletter, Mar. 2008, available at http://www.champlainhousingtrust.org/assets/files/AtHome_March2008.pdf

⁵³ Yesim Sangu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 14.

⁵⁴ *Id.* at 16

⁵⁵ *Id.* at 18

⁵⁶ *Id.* at 10.

⁵⁷ Kevin Girga et. al., *A Survey of Nationwide Community Land Trust Resale Formulas and Ground Leases*, at <http://www.thecenterforattainablehousing.org/uploads/documents/54/file/ResaleFormulasandGroundLeases.pdf>

⁵⁸ *About Chapel Hill and Orange County*, available at <http://www.visitchapelhill.org/media/about-chapel-hill-and-orange-county/>

⁵⁹ *Finding a Home*, Orange Community & Housing Land Trust, available at <http://www.ochlt.org/findingahome.shtml>

⁶⁰ *2007 Annual Report*, Orange Community & Housing Land Trust available at <http://www.ochlt.org/documents.shtml>

⁶¹ *Finding a Home*, Orange Community & Housing Land Trust, available at <http://www.ochlt.org/findingahome.shtml>

60 % of their actual value.⁶² The Orange County Community Land Trusts' income for the 2006-2007 fiscal year was \$466,000 with \$347,000 in expenditures.

The Athens Land Trust operates in Clark County Georgia which is also home to the University of Georgia. The Athens Land Trust was founded in 1994. It serves a dual goal of land conservation and providing affordable housing. It currently has over 500 acres in conservation and approximately 100 housing units.⁶³ Potential homeowners can not make more than 80% of the area median income. That translates to maximum income levels of \$30,400 for one person, \$34,750 for families of two and \$43,450 for families of four.⁶⁴ In 2006, the Athens Land Trust reported total assets of approximately \$1.5 million and revenue of \$348,500. Its operating expenses for 2006 were \$216,561.⁶⁵ Recently, the Athens Land Trust has opted to follow in Burlington's footsteps and is constructing a rental project which will have both income restricted and free market units.⁶⁶ However, unlike Burlington it appears to still maintain a small core staff of approximately 5 individuals.⁶⁷

Portland Community Land Trust (PCLT) was founded in 1999. The Portland Community Land Trust serves families that earn up to 80% of the area media income.⁶⁸ The PCLT operates with a staff of about 8 individuals. In 2006, it had 65 homes in Portland and projected that would increase to 100 homes in 2007. According the PCLT's *2006 Annual Report*, its operating budget was \$358,000 with projected increase to \$536,000 in 2007.⁶⁹ In 2006, the average purchase price of a PCLT home was \$124,000.⁷⁰ At resale, owners get to keep any equity in their home and 25% of appreciation.⁷¹

There are numerous variations of the goals and services a community land trust can provide to the community it serves. A CLT can operate with either a large staff or a very small staff. Operation budgets also tend to vary based on size and locality. The goals of a CLT often influence the structure of the organization itself.

⁶² *Id.*

⁶³ *Our Mission.* The Athens Land Trust. *available at* <http://www.athenslandtrust.org/index.htm>

⁶⁴ *Affordable Housing.* The Athens Land Trust *available at* <http://www.athenslandtrust.org/housing.htm>

⁶⁵ *2006 Annual Report* The Athens Land Trust *available at* <http://www.athenslandtrust.org/pdf/2006annualreport.pdf>

⁶⁶ *Affordable Housing.* The Athens Land Trust *available at* <http://www.athenslandtrust.org/housing.htm>

⁶⁷ *Contact Us.* The Athens Land Trust *available at* <http://www.athenslandtrust.org/contact.htm>

⁶⁸ *About PCLT.* Portland Community Land Trust. *available at* <http://www.pclt.org/about>

⁶⁹ *2006 Annual Report.* Portland Community Land Trust. 4 *available at* http://www.pclt.org/files/PCLT_annual_report_2006.pdf

⁷⁰ *Id.*

⁷¹ *About PCLT.* Portland Community Land Trust. *available at* <http://www.pclt.org/about>

III. Components of a Community Land Trust

There are several elements that compose community land trusts. Each of these variables can be altered according to the specific goals of a community land trust and the needs of the community. These elements include the non-profit entity, the terms of the ground lease, who qualifies to purchase a home, funding sources for the CLT, availability of financing to homeowners and the resale formula.

A. Goals of the Community Land Trust

Community land trusts can be utilized to achieve different goals in both poor and wealthy areas. In lower income areas, the goals are often revitalization of neighborhoods, sustaining owner-occupancy and preventing a return to absentee ownership.⁷² Whereas in communities with high property values, CLTs are utilized to create affordability in perpetuity. The goal is to “limit resale prices so the homes will continue to be affordable for lower income households.”⁷³ Ultimately, most CLTs are formed with affordability in mind. Nearly 76% of community land trusts were created in response to increases in housing prices within their targeted area.⁷⁴

Community land trusts provide many benefits to the community and to the individual. Benefits to the community include preservation of affordable housing, retention of community invested subsidies and increased residential stability.⁷⁵ Benefits to the individual include ability to own a home, acquisition of wealth by building equity and mobility.⁷⁶ Mobility involves the ability to resell when an owner leaves the area or is ready to move into the unregulated market. Ideally, if an owner has held on to the home for a significant number of years, even with the resale formula, they may have enough equity to make a down payment on a market rate home.

While the community land trust model has the same basic elements, these elements are often given differing levels of priority, leading individual CLTs to structure their organizations in differing ways that reflect their goals and desired outcomes. Community land trusts built on the same model may vary from the classic community land trust structure. Some of the basic elements of the community land trust and its variations are discussed below.

⁷² *Community Land Trusts: Why Use it*. Policy Link at <http://www.policylink.org/EDTK/CLT/Why.html>

⁷³ *Id.*

⁷⁴ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 9.

⁷⁵ John E. Davis & Amy Demetrowitz, *supra* note 4 at 5.

⁷⁶ *Id.* at 5.

B. The Non-profit Entity

In the community land trust model a non-profit holds the land in trust for the benefit of the community. Either an existing non-profit organization or a newly formed CLT corporation can be the landowner. Most community land trusts, nearly 81% are independent non-profit corporations.⁷⁷ Typically, community land trusts are designed to be charitable organizations under the Federal Tax Code. In order to qualify for charitable status they often have goals such as “providing housing for low-income people and redeveloping blighted neighborhoods.”⁷⁸ As a non-profit the corporation may also seek tax-exempt status under a particular state’s laws.

Many community land trust corporations follow the structure set forth in the National Affordable Housing Act of 1990 which was amended in 1992 to include CLTs.⁷⁹ The Housing Act requires that a majority of the Board of Directors be elected by the CLTs’ membership. Under federal standards, membership is open to anyone living within the defined geographic service area.⁸⁰ The board typically consists of 9, 12 or 15 members.⁸¹ There are usually three types of members: 1) representatives of the community who are CLT lessees, 2) representatives of the community who are not CLT lessees 3) representatives from “public officials, local funders, nonprofit providers of housing or social services.”⁸²

C. Funding and Land Acquisition

Most community land trusts are committed to the principle of expansionist acquisition. Expansionist acquisition is “an active acquisition and development program, aimed at expanding the CLT’s holdings of land and increasing the supply of affordable housing (and other types of buildings) under the CLT’s stewardship.”⁸³ Consequently, there are two separate funding issues that need to be taken into consideration when forming a community land trust. The first is the funding necessary to purchase land; the second is core operation costs of a CLT.

Community land trusts have a variety of funding sources. They include fees collected from lessees and renters, federal funding, state and local funding, private donations and grants.⁸⁴ As noted above, CLTs often receive a large portion of their funding from federal programs. Two programs

⁷⁷ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 9.

⁷⁸ John E. Davis & Amy Demetrowitz, *supra* note 4 at 2.

⁷⁹ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 10.

⁸⁰ 42 U.S.C. § 12773 (f)

⁸¹ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 22

⁸² John E. Davis *supra* note 5 at 5.

⁸³ *Id.* at 6.

⁸⁴ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 18-19.

commonly used to fund CLTs are the Community Development Block Grant Program (CDBG) and grants.⁸⁵

Land acquisition costs and funding vary by locality. Occasionally, private land or funds are donated for land acquisition. Sometimes CLTs must obtain mortgages on the land they purchase for development or rehabilitation.⁸⁶ In other instances, municipalities will donate excess land holdings to the community land trust. Another method that has been used to obtain land is a municipally mandated donation of land from developers.⁸⁷

In addition to start-up costs and land acquisition, a CLT will need sufficient finances to cover its core operation costs. These core operation costs are those that are necessary to organizational functionality but “that are not directly related to real estate development and other programs that do not directly support CLT operation (e.g. crime prevention).”⁸⁸ According to the Lincoln Institutes’ National Study of CLTs, the median operating budget of CLT corporations in 2005 was \$102,500 and the median for a CLT program contained within a larger nonprofit was \$246,579.⁸⁹

D. The Home Owner

There are numerous ways to determine who will qualify as a potential homebuyer in a CLT. Community land trusts typically serve a specific income range. This range tends to be somewhere between 50% to 80% of the area median income.⁹⁰ The goal of reaching low income groups is usually necessary to maintain charitable status. However, it is possible to use the CLT model to serve higher income groups. Such an organization would not likely achieve charitable status under state or federal regulations.⁹¹

Factors other than income can be used to select potential buyers as well. Some CLTs allow buyers from out of the area, but give preference to purchasers already residing in the

⁸⁵ John E. Davis *supra* note 5 at 51.

⁸⁶ Institute for Community Development (Springfield, Mass.). *The Community Land Trust Legal Manual: A Handbook for Community Land Trust and Their Attorneys*. 10-11(Institute for Community Economics) (2nd ed. 2002).

⁸⁷ John E. Davis *supra* note 9 at 54.

⁸⁸ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 15.

⁸⁹ *Id.*

⁹⁰ *Id.* at 20.

⁹¹ John E. Davis *supra* note 9 at 1-2.

service area.⁹² A few CLTs will take buyers on the basis of greatest need. Other CLTs give priority to those with disabilities.⁹³

Finally, the price of the homes will determine who can qualify as a potential purchaser not only at the initial sale but for future buyers as well. Affordability for a homeowner involves two aspects: 1) the ability to make the down payment and 2) the ability to meet monthly payment requirements.⁹⁴ If a house does not meet these affordability criteria, it does not matter where the targeted income range is set. The sale price must be low enough to be realistically affordable for the targeted income group.⁹⁵

E. Separation of Ownership and the Lease

In traditional real property ownership, the landowner holds legal title to both the land and the buildings or improvements on the land. The community land trust model alters the traditional method of ownership by separating the ownership of the land and the ownership of the improvements on the land. This dual-ownership is intended to increase the affordability of the home by removing the underlying cost of the land.⁹⁶ The home is sold to an income qualified buyer and the land beneath the home is leased for small fee to the homeowner.⁹⁷ The homeowner's rights and obligations under the lease, as well as the home, are inheritable.⁹⁸

The lease defines the relationship between the community land trust and the homeowner.⁹⁹ It is also the means by which a CLT can regulate who occupies the units, collect land use fees, manage the resale process, assure that buyers obtain mortgages that protect the CLT's interests, and enforce the resale formula. The duration of the lease is for a specific number of years and is renewable for as long as homeowner owns the home. The lease usually places several restrictions on the homeowner including limits on resale and subletting.¹⁰⁰ It also will assign who pays the taxes on the property.¹⁰¹ Typically it provides the CLT with an option to repurchase the property at

⁹² John E. Davis *supra* note 9 at 26.

⁹³ *Id.*

⁹⁴ Institute for Community Development *supra* note 86 at 7-3.

⁹⁵ *Id.*

⁹⁶ Tom Peterson, *supra* note 2 at 23.

⁹⁷ Institute for Community Development *supra* note 86 at 9-1.

⁹⁸ John E. Davis *supra* note 9 at 2.

⁹⁹ Institute for Community Development *supra* note 86 at 2-7.

¹⁰⁰ *Id.* at 1-10 to 1-11.

¹⁰¹ *Id.* at 3-5.

resale.¹⁰² The lease also may require a homeowner to get permission before adding on to the home or obtaining a second mortgage.¹⁰³

F. Mortgages and Lenders

In addition to the above limitations on the landowner, the separation of rights can make it more challenging for low-income buyers to find mortgage companies willing to finance the purchase. Additionally, the CLT and the lender may have competing interests. These competing factors can affect which loans are available to the purchaser, the term of the lease, the ability of the community land trust to terminate the lease, and the lender's foreclosure rights.

1. Standard Permitted Mortgages

The community land trust will be concerned with preserving its own interests in the land as well as preventing predatory lending. This interest is often balanced with the buyer's need to procure funding for the home. In order to protect its interest, the CLT will typically only permit the mortgaging of the home and lease by the homeowner not the land below the house.¹⁰⁴ The community land trust assures that a loan is obtained that protects its interests by requiring that a purchaser obtain a loan that meets its "standard permitted mortgage" as defined by the lease.¹⁰⁵

2. Term of the Lease

The mortgage lender will want to assure that the lease doesn't expire during the term of the loan. For this reason leases tend to be in the range of 60 to 99 years.¹⁰⁶ Many CLTs will also issue a new lease when the property is resold to a new qualified buyer.¹⁰⁷ This permits the clock to restart for each new purchaser and will satisfy lender's requirements that the lease extend longer than the life of the mortgage.

¹⁰² *Id.* at 1-10 to 1-11.

¹⁰³ *Id.* at 10 -2.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 10-5.

¹⁰⁷ *Id.* at 10-6.

3. Termination of the Lease

The CLT and lender have competing interests when it comes to lease termination. The CLT will want the option to terminate the lease when the buyer has violated its provisions.¹⁰⁸ This is especially important if provisions essential to the CLT's mission such as the requirement that the owner occupy the home or the payment of ground lease fees are breached. In contrast, the lender wants assurance that its interest in the lease is protected.¹⁰⁹ Sometimes compromises are reached that require that the CLT give the lender notice and opportunity to cure a default in the lease.¹¹⁰ Another solution is to include a provision that upon termination of the lease to the homeowner the CLT will issue a new lease directly to the lender.¹¹¹

4. Foreclosure

Foreclosure rights are another area where lenders and community land trusts have differing interests. Both entities will want to preserve their interest in the land and home. Most CLT's will require that they receive notice and an opportunity to cure the default before the property is foreclosed.¹¹² The CLT may also have the right to pay off the entire mortgage and assume the position of the mortgage company.¹¹³

Once the foreclosure occurs, the CLT will have the option to purchase the home for the total outstanding mortgage amount plus fees and costs.¹¹⁴ If the CLT does not exercise these options, then the structures and the lease will be sold on the open market. Often lenders will require that the CLT lift its resale restrictions on the property at this time. In exchange for this concession, the CLT often retains the right to raise the ground lease fees to reflect the new market value of the property.¹¹⁵

G. The Resale Formula

The resale formula plays an integral role in assuring long-term affordability of CLT homes and is the means by which the proceeds of the sale of a CLT home are allocated between the homeowner and the CLT. It is also a reflection of the goals of each community land trust. A 2002 Survey of CLT resale formulas concluded that "the two most important influences on resale

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 10-3 to 10-4.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 10-6.

¹¹² *Id.* at 10-7.

¹¹³ *Id.*

¹¹⁴ *Id.* at 10-8.

¹¹⁵ *Id.*

formulas are local housing markets and agency objectives.”¹¹⁶ Community land trusts attempt to give homeowners what the CLT has deemed “fair return” on their investment.¹¹⁷ The term fairness is really the balancing of several considerations. The primary conflict is the right of the homeowner to receive a good return on their investment versus the ability of the next homeowner to purchase an affordable home.¹¹⁸ Important secondary considerations may include permitting homeowner mobility, discouraging quick resale for a profit; and encouraging owners to maintain or improve their homes. It is also necessary that formulas be relatively simple to increase the ease of administration, prevent disputes and assure informed consent by buyers.¹¹⁹

Resale formulas have been categorized into four different types. They are itemized formulas, appraisal based formulas, indexed formulas and mortgage based formulas.¹²⁰ The Lincoln Institute’s 2006 survey revealed that 55% of CLT’s utilize the appraisal based formula.¹²¹ The second most popular method of calculating a buyer’s return was the index method.¹²²

1. Appraisal Based Method

The appraisal based method requires an appraisal both at the time of purchase and at the time of sale.¹²³ The difference in the two appraisals represents the appreciation in the home. The homeowner will then be permitted to keep a percentage of the appreciated value of the home. This percentage can either be a set amount or variable based on the number of years a homeowner occupies the property. The appraisal is ideally on the value of the structures on the property and doesn’t include the land below the structure. In practice, it is often difficult to truly separate the value of the structure from the value of the land.¹²⁴

The advantages of the appraisal method are that it is easy to administer and easy to understand. Reliance on professional appraisers can also reduce conflicts that may occur if the CLT is required to make value determinations on its own. The downside of this formula is

¹¹⁶ Kevin Girga et. al., *A Survey of Nationwide Community Land Trust Resale Formulas and Ground Leases*. 4 (2002) available at <http://www.thecenterforattainablehousing.org/uploads/documents/54/file/ResaleFormulasandGroundLeases.pdf>

¹¹⁷ John E. Davis *supra* note 9 at 27.

¹¹⁸ John E. Davis & Amy Demetrowitz, *supra* note 4 at 20; *see also* Institute for Community Development *supra* note 86 at 8-3.

¹¹⁹ Institute for Community Development *supra* note 86 at 8-4.

¹²⁰ *Id.* at 8-7.

¹²¹ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 31.

¹²² *Id.*

¹²³ Institute for Community Development *supra* note 86 at 8-12 to 8-13.

¹²⁴ *Id.*

appraisals may vary. It also lacks the ability to account for some market forces such as rapid appreciation or inflation.¹²⁵

2. Index Formulas

Index based methods of determining the resale price adjust the price by linking to an index. Two common indexes are Area Median Income (AMI) and the Consumer Price Index.¹²⁶ The index formula is typically: Resale price = Purchase price + (purchase price x's percent change in index)¹²⁷

As an example, let's assume a home was originally purchased for \$150,000. The homeowner pays \$5,000 down and has acquired an additional \$15,000 in equity through monthly mortgage payments. After 5 years in the home, the owner is ready to sell. Ignoring interest for the sake of simplicity, the owner's current mortgage payoff is \$130,000.

Table 1

Purchase Price	-	Equity (Down Payment + Monthly Mortgage Payments)	=	Mortgage Payoff
\$150,000	-	(\$5,000 + \$15,000)	=	\$130,000

The price the owner may ask for the home is limited by the resale formula. Let's assume the resale formula is tied to an index that increased by 10% over 5 years. The home's appreciation is determined by the index so it would equal 10% of \$150,000 or \$15,000. The \$15,000 is added to the purchase price of \$150,000 equaling a resale price of \$165,000.

Table 2

Purchase Price	+	Appreciation (Resale Price x's % change in index)	=	Resale Price
\$150,000	+	\$15,000 or (\$150,000 x 10%)	=	\$165,000

The resale price determines the amount of money a homeowner can recoup at resale. The homeowner would recoup his equity of \$20,000 plus a portion of the appreciation as determined by the change in the index. In this case, we'll assume that the owner keeps 100% of the increase in value as determined by the index.

¹²⁵ Institute for Community Development *supra* note 86 at 8-14 to 8-16.

¹²⁶ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 32.

¹²⁷ *Id.*

Table 3

Resale Price	-	Mortgage payoff	=	Total amount recouped by owner*	=	(Equity + Appreciation)
\$165,000	-	\$130,000	=	\$35,000	=	\$20,000 + \$15,000

*assuming the formula permits owner to keep 100% appreciation

The benefit of this method is that it is tied to an index that tends to assure affordability for other households at the same income level as the initial purchaser of the home. However, the downside is there is no guarantee that the index will assure affordability. It is possible that the index may cause resale prices to reset at a level that is not truly affordable to low income individuals whose income may not rise at the same rate as the overall growth in a locality. Another downside is that there is little incentive for homeowners to improve their properties, since the resale price is not tied to the actual value of the home at resale.¹²⁸

3. Itemized Formulas

Itemized formulas take into account a preset list of factors “that affect the value of a home or the owner’s investment in the home.”¹²⁹ Usually these items are either added to or subtracted from the owner’s equity in the home.¹³⁰ Some of the factors that may be included in the formula are the value of improvements to the home, penalties for damage beyond normal wear and tear and adjustments for inflation or other market factors.¹³¹ While itemized formulas are more likely to assure that the profit a homeowner receives at the sale of the home is linked to the owner’s investment in the home, the elements by their nature are subjective and difficult to value. This can potentially lead to disputes between CLTs and sellers.¹³²

4. Mortgage Based Formulas

Mortgage based resale formulas calculate “the resale price of a CLT house on the basis of the maximum amount of mortgage financing that a homebuyer at a targeted level of income can afford at current interest rates.”¹³³ The balance between the seller’s return on the sale of the home and the buyer’s ability to purchase the home is weighted entirely on the side of buyer affordability.¹³⁴ The

¹²⁸ Institute for Community Development *supra* note 86 at 8-19 to 8-20.

¹²⁹ *Id.* at 8-7.

¹³⁰ *Id.*

¹³¹ *Id.* at 8-8 to 8-11.

¹³² *Id.* at 8-11 to 8-12.

¹³³ Yesim Sungu-Eryilmaz & Rosalind Greenstein, *supra* note 7 at 32.

¹³⁴ Institute for Community Development *supra* note 86 at 8-21.

benefit of this formula is that it guarantees affordability to individuals at a given income level. The disadvantages are that the home will be unaffordable to anyone below the set income level unless additional subsidies are added at resale and it gives no consideration to the financial status of the seller.¹³⁵

¹³⁵ *Id.* at 8-22.

IV. The Pros and Cons of Community Land Trusts

There are numerous arguments both for and against community land trusts. One area for disagreement is over the ideology behind the community land trust model. A second issue is whether the community land trust model allows lower income individuals to eventually participate in the free market or if it creates a second class of property owners. Third, there is the question of whether community land trusts provide much needed protections from market forces and foreclosure. Finally, there are potential legal challenges to the validity of provisions in a typical community land trust lease.

A. Conflicting Ideology

The community land trust model elicits strong responses from its proponents and opponents. Proponents of community land trusts see them as a means to social change and redistribution of land. Opponents argue that CLTs promote ideals that are contrary to the free market system. A second ideological debate that often arises is whether homeownership is a right or a privilege.

Many CLT advocates believe that land distribution in the United States is irreparably skewed to favor the wealthy and excludes the poor. Proponents argue that wealth redistribution is a positive goal. Establishing a community land trust is just one step in remedying past injustices. Put another way “The historical concentration of land in the hands of the powerful created today's crisis in affordable housing. Land distribution and property rights provide a legal and societal environment in which poverty and racism grow. A redistribution of land to protect the vulnerable envisions a solution to the crisis.”¹³⁶

In contrast, opponents argue that community land trusts are incompatible with free market ideals. They limit the number of homes available in the free marketplace. This reduction of inventory results in the increased costs to those that are not income qualified. Further, a redistribution of wealth is incompatible with the basic tenets of capitalism and is more akin to socialist principles.

A second point of ideological divergence is whether homeownership is a right or a privilege. Those who advocate for housing as a basic right argue that “We could and should

¹³⁶ Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*. 5 B.U. Pub. Int. L. J. 69, 70 (1995).

guarantee high-quality truly affordable housing in “good” neighborhoods for all....”¹³⁷ Proponents argue that this right was articulated by Congress as a national goal in the 1949 Housing Act.¹³⁸ Not only is shelter a necessary element to assure survival, but a person’s emotional and social development depends on where they call home.¹³⁹ Individuals who live in “good” neighborhoods will have access to better education and other opportunities for advancement.¹⁴⁰ Advocates of a right to housing argue that current “inequality and housing problems are an outgrowth of the nation’s economy, financial structure, and flawed government and private market practices.”¹⁴¹

In contrast, there are many individuals who believe that home ownership is a privilege, not a right. As one financial expert put it, “one cold, hard reality about homeownership [is] it’s not necessarily for everyone.”¹⁴² Some people are simply not ready for the responsibility of homeownership. As a privilege, homeownership is something you must earn. Other opponents believe that simply ensuring a right to housing ignores the economic and social factors that lead to poverty.¹⁴³ Further, such policies would create greater dependency on government and ensure continued poverty.¹⁴⁴

B. Increased Participation in the Free Market vs. Second Class Homeowners

Many opponents of community land trusts argue that they create a second class of citizens, those who do not own the land under their homes. In contrast, proponents often argue community land trusts are a tool to increase participation by lower income individuals in the free market system.

The second class citizen argument stems from community land trust homeowner’s limited rights in the property. As a leaseholder, the owner’s rights to the land under the home are restricted. Additionally, the resale formula limits a homeowner’s ability to acquire equity. “Restricting the equity low-income people can enjoy upon resale of their housing, while failing

¹³⁷ Rachel G. Bratt, *Why a Right to Housing is Needed and Makes Sense: Editors Introduction*. 1 (Temple Press 2006).

¹³⁸ *Id.*

¹³⁹ *Id.* at 3 & 4.

¹⁴⁰ *Id.* at 2.

¹⁴¹ *Id.* at 13.

¹⁴² Lynnette Khalfani-Cox. *Everyone Should Own a Home, Right? Wrong! Why Some People Shouldn’t Become Homeowners* at <http://www.blackamericaweb.com/site.aspx/finance/homeowners051608>

¹⁴³ James H. Carr. *Comment on Chester Hartman’s “The Case for a Right to Housing”: The Right to “Poverty with a Roof”—A Response to Hartman* 9 Housing Policy Debate 247; 248 (1998).

¹⁴⁴ *Id.* at 255-56.

to place the same restrictions on middle or upper-income home sellers, drastically reduces their ability to participate equally in the housing market.”¹⁴⁵ This reduced ability to participate in the market will continue to widen the gap between the haves and have nots. In this case, those who can afford to purchase land at market value are able to earn far greater returns on their homes than those who are “trapped” in the second rate housing market. Thus, a second class of homeowner is created.

In contrast, many proponents argue that, at its best, the community land trust allows buyers to earn equity and eventually move into the free market housing. At its worst, it provides decent low cost housing that would otherwise be unavailable.¹⁴⁶ Even when equity is insufficient to allow movement into free market housing, homeowners will still earn equity and build wealth at a far greater rate than if they remained a renter.¹⁴⁷

C. Freedom from Foreclosure and Other Market-Forces

Advocates for community land trusts tout them as foreclosure free as well as providing protection from market forces to the homeowner. The CLT typically retains an interest in the home; permitting it to step in and cure default on a mortgage or repurchase at foreclosure. Community land trusts provide homeowners “with a partner when facing mortgage defaults such as those rampant in the current subprime meltdown.”¹⁴⁸ Advocates cite statistics that there were only two reported foreclosures amongst community land trust homeowners in 2007 in support of the proposition that they are a virtually foreclosure free housing option.¹⁴⁹

The counterargument is this still does not mean that community land trusts or the homeowner is immune from effect of default or foreclosure. If a home goes to foreclosure the homeowner may still lose their investment as well as a means of housing even if the CLT repurchases the home. The CLT may also suffer financial consequences when a home is foreclosed on or it must step in to cure default. For example between, 1984 and 2002, Burlington Community Land Trust reported that it had two condominium units go into foreclosure. While the BCLT was able to repurchase the units, the initial subsidy was lost in its entirety. BCLT had to use additional subsidy funds to rehabilitate the units before reselling them

¹⁴⁵ Deborah Kenn, 5 B.U. Pub. Int. L. J. at 70.

¹⁴⁶ *Id.* at 70.

¹⁴⁷ John E. Davis *supra* note 9 at 14.

¹⁴⁸ David Abromowitz & Roz Greenstein, *supra* note 7.

¹⁴⁹ *Id.*

to new low-income buyers.¹⁵⁰ These losses represent a relatively small portion of the BCLT's inventory; however, absorbing these costs would be much more difficult for smaller or younger CLTs.

Community land trusts may mitigate market forces but they are not completely unaffected by them. Homes are still subject to market pressures. In Burlington, there was a downturn in the condominium market. As a result, BCLT had difficulty selling its condos. Instead of permitting the condos to stand unsold the BCLT permitted buyers with higher incomes to purchase homes.¹⁵¹ It begs the question: what affect, if any, will current declines in the housing market have on CLTs? Will their subsidies be deep enough to maintain long-term affordability?

D. Legal Challenges

1. Does a CLT Violate the Rule against Perpetuities?

Arguably, the provision in a CLT's lease retaining a preemptive right to purchase the home violates a legal rule known as the rule against perpetuities. The rule against perpetuities requires that a contingent interest in property must vest within 21 years of a life in being in order to be valid.¹⁵² Translated to laymen's terms the rule of perpetuities simply prevents current property owners from placing restrictions on the resale of property by future owners that continue forever. Instead, an artificial date is created when the condition must vest (or occur). Applied to the community land trust model, the preemptive right to purchase the home violates the rule because the right could be exercised for the first time more than 21 years after the death of the initial owner.¹⁵³

Proponents of CLTs argue that courts should not invalidate the preemptive right but instead should apply a reasonableness test to determine the preemptive rights validity.¹⁵⁴ Additionally, some courts have taken a wait and see approach to the rule. If the interest vests or the preemptive right takes affect within 21 years of the death of the initial owner then it does not violate the rule against perpetuities.¹⁵⁵

¹⁵⁰ John E. Davis & Amy Demetrowitz, *supra* note 4 at 12. (noting "There were two cases where the public subsidy was lost in its entirety. Both were condominiums. Both were foreclosures.")

¹⁵¹ *Id.* at 8.

¹⁵² Institute for Community Development *Supra* note 86 at 14-5.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 14-5.

¹⁵⁵ *Id.*

2. An Illegal Restraint on Alienation

Another potential legal challenge to the community land trust model is that the preemptive right to purchase property at a limited resale price places an unreasonable restraint on alienation. A restraint on alienation of property is any restriction that “prevents the owner from disposing of it at all or from disposing of it in particular ways or to particular persons.”¹⁵⁶ “An overarching concern of alienability restrictions is the effect of any limitation on the operation of a free market in land ownership and development. Restraints can adversely impact the development and improvement of land, impede owners' mobility, and subjugate current ambitions to those of past owners.”¹⁵⁷ Arguably, the restrictions on the resale price of the property and the option to repurchase the land violate the common law rule against restraints on the alienation.

Some courts have adopted a balancing test to determine whether a restraint on the transfer of property is reasonable. If the court finds that the restraint is reasonable it may not invalidate the restriction. Proponents of CLTs argue that the balance weighs in favor of the CLT’s restrictions on the resale of the property.¹⁵⁸

¹⁵⁶ Black’s Law Dictionary 1318 (7th ed. 1999).

¹⁵⁷ Ngai Pindell, Fear and Loathing: Combating Speculation in Local Communities. 39 U. Mich. J.L. Reform 543, 576 (2006) (containing a general discussion of restraints against alienation)

¹⁵⁸ Institute for Community Development supra note 86 at 14-3.

V. Conclusion

Community land trusts are a complex and unique form of land ownership. There are communities utilizing land trusts in 35 states and the District of Columbia. These community land trusts vary in size, goals, and types of housing offered. While community land trusts contain a number of common elements, such as a non-profit corporation, duality of ownership, a lease, and resale formula, all of these elements can be modified to meet the particular goals and needs of a community. CLTs are increasing in numbers; however, there are still numerous potential benefits and problems that should be carefully considered before moving forward with development of a community land trust.