

Starting a Community Land Trust

ORGANIZATIONAL AND OPERATIONAL CHOICES

Development

CLTs use a variety of development strategies to bring land and housing into their price-restricted domain of permanent affordability. Seven such options are described in the present chapter, followed by a consideration of outstanding issues that are raised by each.

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This is one chapter of an introductory manual, *Starting a Community Land Trust: Organizational and Operational Choices*, prepared by John Emmeus Davis, a Partner in Burlington Associates. The full manual is available on-line at the **Burlington Associates CLT Resource Center**: www.burlingtonassociates.com.

DEVELOPMENT ON CLT LAND: OPTIONS

The development of residential, commercial, and other structural improvements on the CLT's land may involve either the construction of new buildings or the acquisition, rehabilitation, and resale of existing structures. There is nothing about the CLT model that makes the development process for a CLT any different than the process that any other nonprofit or for-profit developer must follow in planning and building a residential or commercial project. Even the financing of a CLT project, during the development phase, introduces nothing new. The options for a new CLT to consider when it comes to development revolve mostly around the *method* of development – i.e., how the land gets into the CLT's hands; how the structural improvements get built; and who takes the initiative in making this happen. (Related concerns like long-term financing for CLT projects and the type and tenure of the projects themselves are taken up in later chapters, under FUNDING and SPECIAL TOPICS.) CLTs have used *seven* different development methods.

CLT-initiated Development

The CLT – using its own staff and outside contractors hired through an RFP process – initiates and supervises the development of residential or commercial structures on its own land. These improvements are owned by the CLT until the end of the construction period. They are then sold off to individual homeowners, commercial investors, or to a nonprofit or for-profit corporation. Most CLTs eventually become active developers, playing the lead role in planning projects, preparing *pro formas*, packaging financing, securing approvals, hiring architects and builders, and overseeing construction.

Buyer-initiated Acquisition

Prospective homebuyers attend homebuyer education classes and a CLT orientation session to learn about the provisions and restrictions contained in the CLT ground lease. Each homebuyer, if eligible, is pre-qualified for grants and other types of assistance available through the CLT. Each homebuyer, if creditworthy, is pre-qualified through a private lender for a mortgage, establishing the maximum amount that the prospective homebuyer can borrow and, in effect, the maximum sales price that he or she can afford. The homebuyer then searches the market for an existing house that (1) fits his/her personal preferences and needs, (2) meets the mortgage limit established by the lender, and (3) fits the parameters for location and condition set by the CLT. At closing, the CLT purchases the land and house from the seller, sells the house to the homebuyer, and executes a ground lease with the homebuyer, conveying to him or her the long-term use of the land beneath the house.¹

¹ Buyer-initiated programs are being operated by CLTs in Bellingham, WA, Boulder, CO, Burlington, VT, Clackamas County, OR, Duluth, MN, Minneapolis, MN, and Portland, OR, to name a few.

Developer-initiated Projects

Even when CLTs are actively engaged in doing development themselves, projects may be brought to them by nonprofit or for-profit developers who propose to construct housing or other improvements on land that is either already owned by the CLT or will eventually be owned by the CLT, once the project is completed. It is the developer, not the CLT, that initiates the project and takes most (if not all) of the risk during the project's construction. Development agreements for such projects are negotiated on a case-by-case basis between the developer and the CLT.

Stewardship Projects with Partners Doing All Development

In several communities, CLTs have decided from the start not to be developers themselves, preferring to concentrate instead on the model's stewardship function: assembling land, leasing land, and preserving the affordability of any buildings located thereon. Development is left in the hands of one or more nonprofit partners, often the same nonprofit that sponsored the CLT's creation in the first place. The CLT prioritizes certain types of projects and certain neighborhoods, adopting an internal set of investment criteria. Then, in consultation with its nonprofit partner(s), the CLT acquires specific parcels of land that meet those priorities and makes those parcels available to its partner(s) for development.²

Municipally-initiated Projects

In a number of cities, a municipal agency has conveyed city-owned land to a CLT with the understanding that the CLT will oversee development of a particular project which the city wants to see built on the site (usually affordable housing). The CLT oversees development on the site and later ensures the long-term affordability of what is built on the site.³

Municipally-mandated Units (Inclusionary Housing)

Municipalities have also made use of inclusionary zoning or various regulatory incentives like density bonuses, impact fee waivers, or expedited permitting to force (or bribe) private developers into producing affordably-priced units which

² Some CLTs *temporarily* restrict their role to stewardship, avoiding a development role only until they have built the capacity to do it well. In Portland, Oregon, for example, the **Portland Community Land Trust** made an early decision not to do development itself, preferring to make land available for community development corporations that would partner with the CLT in developing affordable housing. In recent years, the PCLT has accepted a more active role in initiating new projects. A few other CLTs, by contrast, have decided that the landscape of nonprofit housing development organizations is already crowded enough. They *permanently* eschew a development role, choosing to serve as the steward of land and the steward of affordability for housing developed by one or more nonprofit partners. The **Ashland CLT**, for example, is the recipient and steward of lands and buildings developed by **ACCESS**, a community action agency in Ashland, Oregon. The **Chicago CLT** will be the long-term steward for affordable, owner-occupied housing subsidized by the City of Chicago and produced by nonprofit (or for-profit) developers. The CLT will not become a developer.

³ Examples of such municipally-initiated projects, where publicly-owned parcels of land were conveyed to a CLT, can be found in Albuquerque, NM, Northfield, MN, Yellow Springs, OH, Portland, OR and Syracuse, NY.

are then directed into the care of a CLT. On the city's behalf, the CLT acts as the long-term monitor and enforcer of eligibility, occupancy, and affordability controls imposed on these inclusionary units by the municipality.⁴

PHA-divested Property

Should a PHA divest itself of property that is suitable for homeownership, the land underneath these units could be conveyed to the CLT, whose responsibility it would be to ensure the continuing affordability of these units upon resale and the continuing security of the first-time homeowners who purchase them. Although consideration has been given to such a conveyance of PHA property in several cities, including Portland, OR and Pittsburgh, PA, this has not yet occurred. Only in Wyoming, where land owned by the Teton County Housing Authority was conveyed to the Jackson Hole Community Land Trust for the development of affordable housing, has there been a case of a CLT receiving real estate from a PHA.⁵

DEVELOPMENT ON CLT LAND: ISSUES

In deciding which method(s) of development a new CLT should pursue, a CLT's organizers, sponsors, and funders must consider a number of issues, addressing questions like the following:

CLT-initiated Development

- ❖ Should the CLT be an active developer of housing and commercial facilities on leased land – or is that a role better left to others, freeing the CLT to concentrate on stewardship?
- ❖ Does the CLT have the in-house capacity to plan, package, and oversee the construction of projects on leased land?
- ❖ Does the CLT have marketing materials and a marketing plan firmly in hand before breaking ground or, at a minimum, before the project is half-way built?

⁴ The *Champlain Housing Trust*, for example, (formerly the Burlington Community Land Trust) has become the steward of dozens of resale-restricted, owner-occupied condominiums, constructed by for-profit developers and sold for a below-market price to CHT under Burlington, Vermont's inclusionary zoning ordinance. *Thistle Community Housing* in Boulder, CO and the *City of Lakes CLT* in Minneapolis, MN have played a similar role, acting on their city's behalf to maintain the on-going affordability of inclusionary units.

⁵ On the other hand, several CLTs have had close working relationships with their local PHAs in helping tenants of public housing to become first-time homeowners through the CLT. The *Champlain Housing Trust* (Burlington, VT), *Church Community Housing Corporation* (Newport, RI), the *Madison Area CLT*, and *Northern Communities CLT* (Duluth, MN), in particular, have partnered with their local PHA in taking advantage of recent changes in the Section 8 program, allowing Section 8 to be used in purchasing homes.

- ❖ Does the CLT have the financial resources and financial resiliency to shoulder the risks and absorb the costs of doing development?

Buyer-initiated Acquisition

- ❖ Will the municipality (or other public funders) provide a pool of per-unit subsidies sufficient to allow the CLT to purchase the land under houses selected by low-income homebuyers?
- ❖ In a high-priced housing market, will additional subsidies be needed by the CLT not only to remove the cost of the land but to reduce the price of the house in order to make it affordable for a low-income homebuyer?
- ❖ Will local lenders be willing to pre-qualify prospective CLT homebuyers before a house has actually been identified?
- ❖ Will a would-be homebuyer be able to hunt for a house in any neighborhood or will some neighborhoods be targeted over others?
- ❖ What parameters of price, size, condition, and/or type of housing will the CLT establish for its buyer-initiated program?
- ❖ What role should the CLT – or other nonprofit housing development organizations – play in inspecting, repairing, rehabilitating, and/or weatherizing houses selected by would-be homebuyers?

Developer-initiated Projects

- ❖ What criteria and what process should the CLT follow in evaluating projects proposed by a nonprofit or for-profit developer?
- ❖ What sort of development agreement will best protect the CLT's interests – and those of its future leaseholders – in partnering with a nonprofit or for-profit developer?
- ❖ What sort of protections can the CLT put in place to ensure that it will not be forced to buy a project that is shoddily built?

Stewardship Projects

- ❖ How will the CLT be capitalized so it can play a land acquisition, land assembly, and land-banking role for its development partner(s)?
- ❖ If the CLT is not doing development itself – and, as a result of this decision, is denying itself significant fees from development – how will the CLT fund and staff its own operations?
- ❖ What sort of criteria and what sort of process should be developed for deciding which parcels of land should be acquired by the CLT?
- ❖ If the CLT "banks" land for future development, how are the costs of holding that land and managing that land to be met?
- ❖ What role should the CLT play in deciding what is actually built by its nonprofit partner(s) on land that is owned by the CLT?
- ❖ Is the CLT's development partner committed wholeheartedly to the CLT model, or will the partner continue producing and marketing types and tenures of housing that compete with the limited-equity, leased-land housing available through the CLT?
- ❖ Should a partnership agreement between the CLT and a nonprofit developer be executed on a project-by-project basis, or should there be a multi-year contract, defining the roles and responsibilities of each over a long period of time?
- ❖ How should the costs and risks of development be shared between the CLT as the steward of land and its nonprofit partner(s) as the developer(s) of projects to be located on the CLT's land?

Municipally-initiated Projects

- ❖ If city-owned land is to be conveyed to the CLT, will it be given for free or, at least, will it be sold to the CLT for a price that is low enough to allow the CLT to develop housing that low-income households can afford to buy?
- ❖ How will the risks and responsibilities of developing the city-owned land be allocated between the city and the CLT?
- ❖ If the CLT, after receiving city-owned land, is later unable or unwilling to perform its stewardship responsibilities will the land revert to the city – or can the city assume the CLT's powers and responsibilities as lessor of the land?

Municipally-mandated Units (Inclusionary Housing)

- ❖ What level of staffing will provide the CLT with enough stability and competency to oversee the buying and selling – at an affordable price – of whatever housing is placed in the CLT’s care by the municipality?
- ❖ Is the CLT willing to accept responsibility for guaranteeing the affordability of houses or condominiums that are subsidized or mandated by the city, if this housing is not on land that is owned by and leased from the CLT?
- ❖ If the CLT is the beneficiary of municipally-mandated units that are extracted from for-profit developers, will the municipality provide a fee to the CLT to cover part of the CLT’s cost of marketing those units and keeping them affordable, one resale after another?

PHA-divested Property

- ❖ If a Public Housing Authority were to divest itself of any of the much-needed rental housing that it currently owns and operates, what role should a CLT play in either (a) preserving some of these homes as rental, or (b) making homeowners of the current residents?
- ❖ What sort of protections and services should be put in place to help former PHA tenants to maintain and retain their housing units *after* they have become CLT homeowners?
- ❖ Should PHA lands be conveyed to a CLT at a market price, at a below-market price, or without any payment at all?