



LAW OFFICE OF

Jasleen K. Anand

500 Old Country Road, Suite 316, Garden City, New York 11530

Tel: (516) 536-3350; 3351 _ Fax: (516) 536-3352

_ Email: Jasleen@Jasleenanand.com

19th Annual RPTE Spring Symposia

May 1-2, 2008

Washington, D.C.

Community Land Trust

Workouts within this model

&

Reasons for the lack of a need
to engage in workouts

Definition

- Community land trust is typically a private non-profit organization that owns tracts of land and sells improvements via a 99 year ground lease to homeowner, another non-profit cooperative housing corporation, or for profit entity.

Purpose of forming a land trust

- Land is owned by non profit organization with the purpose of making it available for the building of affordable housing
- The CLT owns the land in perpetuity and thus retains its goals of preserving public investment and of recycling and protecting affordability.

Where Do Community Land Trusts Exist?

The CLT model is used by non-profit organizations in forty out of the fifty states and the District of Columbia. CLTs are mostly concentrated in the Northeast (37%), the West (29%), and the Midwest (19%). Only 15% of CLTs are located in the South.

The Community Land Trust Movement

The roots of the present day community land trust originate from social movements such as the Gramdaan movement in India, inspired by Gandhian principles and by social thinkers for whom land was to be clearly distinguished from property.

How do Community Land Trusts affect affordable housing?

The CLT model creates affordable housing by removing the cost of the land from the housing price by having the land and the house owned by separate entities. The land is provided by the non-profit organization through a long-term lease agreement and the lease holder owns their homes and the improvements on the leased land. However, sales restrictions do apply. In the CLT the rights, responsibilities and benefits of the residential property are shared between individual homeowners and the non-profit corporation which represents the interest of its leaseholders and the community.

Maintaining affordability

- Restrictions on resale: CLTs have a resale policy, that the successor buyer(s) must be low to moderate income buyer and the purchase price shall be no greater than fair value (generally less than market value)
- Subsidy recapture policy: This is implemented to discourage homeowners from reselling their homes within a short period of time of moving into their homes

Resale of a CLT Property

The CLT is automatically involved in the resale of any CLT property because of the separation of land and improvements. This allows the CLT the ability to enforce the income restrictions and resale price in the ground lease agreement.

CLT Option to Repurchase

- The CLT has first rights to purchase the residential or commercial property located on its land.
- The resale price is set by a formula contained in the ground lease which is designed to give the homeowners a fair return on their investment, while also preserving affordable housing to any future purchaser.

Foreclosure Prevention

- According to one of the CLT's-Champlain Housing Trust that have been in existence for 24 years, they have experienced a total of 7 foreclosures in 24 years.
- An agreement exists between the Mortgagee (lender), the Community Land Trust (lessor) and the Homeowner (lessee or mortgagor) which allows for the CLT to cure defaults under the mortgage loan.
- Fannie Mae has also approved the “Fannie Mae Uniform Community Land Trust Ground Lease Rider” which modifies the CLT ground lease to allow Fannie Mae to accept mortgages on the resulting leasehold interest.

Discussion of sample provisions

- A Ground lease executed by and between a community land trust corporation and the homeowner may provide that the only permitted mortgage shall be a leasehold mortgage financing and that
- Provides, that, “in the event of a default in any of the mortgagor’s obligations..., the Permitted Mortgagee shall notify the CLT of such fact and the CLT shall have the right, but not the obligation, within 120

- days after its receipt of such notice, to cure such default in the mortgagor's name and on mortgagor's behalf, provided that current payments due the Permitted Mortgagee and/or due for taxes or insurance during such 120 day period are made when due to the Permitted Mortgagee or to the taxing authority

Continuation of sample provision

- Or insurer, and further provides that the Permitted Mortgagee shall not have the right, unless such default shall not have been cured within such time, to accelerate the note secured by such Permitted mortgage or to commence to foreclose under the Permitted Mortgage or take a deed-in-lieu of foreclosure on account of such default;

Continuation of sample provision

- Provides, that if the Permitted Mortgagee intends to initiate foreclosure proceedings or to take a deed-in-lieu of foreclosure under the Permitted Mortgage, the Permitted Mortgagee shall notify the CLT of its intention to do so prior to initiating foreclosure proceedings or taking a deed-in-lieu of foreclosure and the CLT shall have the right, but not the obligation

Continuation of sample provision

- Within 30 days of receipt of said notice from the Permitted Mortgagee, to pay to the Permitted Mortgagee a sum equal to the outstanding indebtedness secured by the Permitted Mortgage and in exchange to receive from the Permitted Mortgagee an assignment without representation, warranty or other obligation of all its rights, title and interest in, to and under the Permitted Mortgage. Nothing in this.....

Continuation of sample provision

- Subsection....shall prohibit the Permitted Mortgagee from initiating foreclosure proceedings under the Permitted Mortgage during said thirty (30)day period, but the Permitted Mortgagee shall not take a deed-in-lieu of foreclosure during said 30 day period..”
- Provisions extracted verbatim from Sample Community Land Trust Ground Lease prepared and utilized by, The Community Land Trust Project-a product of Community Legal Resources-www.clronline.org/clt

Conclusion

- A community land trust is an innovative model apt for the preservation and retention of affordable housing. It carries out a successful method for the prevention of foreclosures and if circumstances warrant it, also is very effective in “Helping Workouts to Workout.”