

Memorandum



Date: June 5, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George W. Burgess
County Manager

Subject: Report on Community Land Trusts

Agenda Item No. 12(B)2

The following report is presented to the Board of County Commissioners pursuant to Resolution R-1432-06, which directs the County Manager to develop recommendations for the implementation of a Community Land Trust (CLT). This report addresses many of the recommendations in R-1432-06, requested of staff to review, and presents background information on CLTs.

Defining Community Land Trusts

CLTs are not-for-profit 501(c)(3) corporations created to provide and preserve affordable housing for the benefit of the community by permanently retaining ownership of land on which affordable homes (for purchase) are constructed. As a result, the cost of a home to initial and future homebuyers is significantly below market as the value of land is not part of the acquisition. By separating ownership of the land from the structural improvements, the CLT is able to ensure that the homes remain perpetually affordable to very low, low and moderate income families.

Governance of Community Land Trusts

CLTs are private non-profit entities with their own boards, most commonly utilizing a tripartite form of governance. Usually, boards are formed in the following manner: 1) one-third by CLT homeowners to ensure accountability to those who reside on CLT lands; 2) one-third represent the interests of community residents who do not lease lands from the CLT to ensure accountability to the community in which the CLT operates; and 3) the remaining one-third is made up of public representatives, nonprofit housing and/or social service providers, and others speaking for the public interest.

Functions of a Typical Community Land Trust

Target homeowners of CLTs are typically households at 120 percent of the area median income (AMI) or less, though some CLTs have lower income targets. Income-eligible homeowners purchase the house, but lease the land from the CLT under a long-term (typically 99-year) renewable ground lease. Ground lease terms allow the CLT to step in and (a) cure mortgage defaults, forestalling foreclosures; (b) enforce restricted use of home as primary residence of income eligible families; (c) ensure continual occupancy; and (d) force upkeep and/or repairs in event that property is not being maintained or hazardous conditions develop. Successful CLTs also offer post-purchase counseling to homeowners.

Homeowners may sell the house to another income-eligible households or the CLT, subject to a resale formula. The resale formula is designed to preserve the affordability of a CLT home for a future income-eligible household and does not include the value of the land. At the time of sale, a new ground lease is entered into with the new homeowner. Ground lease terms also allow inheritance of the home by, and transfer of the ground lease to, income-eligible heirs.

Typically, successful CLTs are not passive titelholders, but actively engaged to ensure that homes remain assets to the community and families and individual maintain their homeownership status.

Participation of Community Land Trusts

CLTs offer flexibility in housing development and land use, including participation in mixed-use, mixed income projects. CLT housing can take the form of single family homes, multi-plexes, town-homes, condominiums. Some CLTs also have added rental properties to their inventories; however, CLTs are uniquely and primarily created for the purpose of maintaining affordable homeownership opportunities in perpetuity by separating and permanently holding title to the land on which homes are built for the benefit of the community.

There are well over one hundred CLTs throughout the United States. There are seventeen CLTs in Florida, including: Bahama Conch CLT of Key West (1995); Middle Keys CLT (2000); Community Housing Trust of Sarasota County (2005); Delray Beach CLT (2005); CLT of Palm Beach County, Inc. (2006); and Homestead CLT (in formation).

Attachment A includes a summary of key characteristics of Community Land Trusts, including possible funding sources relevant to a Miami-Dade CLT. Attachment B is a Community Land Trust Primer for Local Officials prepared by the national Community Land Trust Project.

Recommendations

In 2005, Palm Beach County initiated and coordinated the establishment of a countywide CLT and committed land, housing development funds, and initial operating support sufficient to cover two-full time salaries and related operating costs for two years. The CLT of Palm County, Inc., a private not-for-profit, was incorporated in March 2006.

If Miami-Dade County were to implement a CLT, staff would recommend that it follow the implementation plan utilized by Palm Beach County (see Attachment C). However, there would be a fiscal impact to the County that has not been determined at this time. Staff would have to evaluate staffing resources necessary to implement and monitor, recommend an amount for development funds, and what County parcels can be conveyed for this effort.

In addition, Resolution R-1432-06 requested that staff consider the following recommendations:

- (a) Appropriate steps for Miami-Dade County to establish a countywide CLT and/or community-wide CLT, including, but not limited to establishing or collaborating with an established nonprofit organization, such as the Miami-Dade Housing Finance Authority and Miami-Dade Affordable Housing Foundation, Inc., engaged in the business of developing affordable housing in Miami-Dade County and working with other affordable housing organizations, such as 1000 Friends of Florida, Inc.**

In cases where counties have initiated the establishment of a CLT, some have worked in partnership directly with a non-profit organization charged with the start-up of the CLT.

As was the case in Palm Beach County, other counties have taken the lead in coordinating the establishment of a CLT and providing it with upfront support in the form of donated land, development dollars, and seed money for two to three years of start-up. Regardless, each CLT is a

private entity incorporated as a not-for-profit corporation with its own board, typically with the tripartite form of governance described above.

The County could collaborate with the Miami-Dade Affordable Housing Foundation, Inc. to establish a CLT. The Miami-Dade Affordable Housing Foundation, Inc., is a private, 501(c)(3) not-for-profit organization, which has been certified by the Treasury Department as a community development financial institution with lending authority. The Foundation also conducts pre-purchase counseling. In addition, the Foundation has participated in housing development as the non-profit partner in an affordable housing tax credit project. The Foundation is willing to explore establishing a CLT as a not-for-profit affiliate of the Foundation with a tripartite form of governance as described above.

The Housing Finance Authority (HFA), is a part of the County, and was created by the Board pursuant to state statute to allow the County to exercise bond authority for single family mortgages and multi-family rental construction lending. The HFA along with other County agencies engaged in housing development and programming (i.e. Office of Community Economic Development, Miami-Dade Housing Agency and General Services Administration) could lend assistance during the implementation stage.

(b) Appropriate steps to determine the availability of County and privately owned land and acquisition of land, including appropriate timelines.

Sources of donated county land could include transfer of multi-family parcels and single-family lots through the county's Infill Housing Program, as suggested in Section 17-127 of the Miami-Dade County Code. In addition, the Mayor's Land Use Task Force has identified three large parcels that could be developed for multi-family housing. Staff notes that there is a significant need for affordable rental housing for which the three parcels could be developed. Land transfers through donation of property through the Infill Housing Program can take approximately 45 to 60 days, assuming prior Board approval.

The CLT would be responsible for seeking and acquiring privately-held properties. As a matter of comparison, a private land transaction can take place within months. Land acquisition by the County is subject to Section 125.355 of the Florida Statutes and, as a result, county acquisition can take up to one year.

(c) Financing mechanisms available through local, state, and federal agencies to finance development, acquisition or rehabilitation of existing properties, including, but not limited to bond financing, tax credits and General Fund commitment.

Available financing for acquisition, development or rehabilitation of existing and new structures can be found in Attachment A.

(d) Appropriate financing mechanisms available through local, state and federal agencies and programs to provide a revenue stream for CLT organizations.

Available financing mechanisms to provide a revenue stream for CLT organizations can be found in Attachment A.

(e) The advantages and disadvantages of homeownership verses rental-type CLTs.

The CLT model has been uniquely developed specifically to maintain affordable homeownership opportunities in perpetuity by separating and permanently holding title to the land on which homes are built.

Some CLTs also have added rental housing properties to their inventories; however, there is no particular distinction between ownership of such properties by a CLT or a not-for-profit organization committed to affordable housing. Rental housing development, ownership and management can be and is performed by not-for-profit organizations, not-for-profit affordable housing developers and community development corporations. There are currently a substantial number of not-for-profit housing developers and community development corporations operating in Miami-Dade.

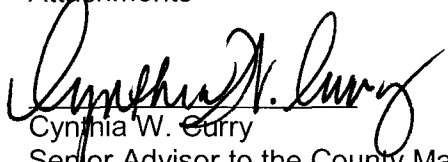
(f) Enactment of or amendment to existing ordinances to establish a CLT.

No enactment or amendment to an existing ordinance is necessary to establish a CLT. Following the implementation measures taken by Palm Beach County, the Board could, by resolution, endorse the creation of a countywide CLT, commit to coordinating the establishment of the CLT, and pledge support to the start-up of the CLT in the form of land and financial support. However, as stated earlier, staff would have to evaluate staffing resources necessary to implement and monitor, recommend an amount for development funds, and what County parcels can be conveyed for this effort. Palm Beach County coordinated the creation and incorporation of the CLT and committed land, housing development funds, and initial operating support sufficient to cover two-full time salaries and related operating costs for two years.

(g) Other relevant matters that should be considered for the development and implementation of a CLT.

At this time, both the land and structural improvements are subject to local property taxes. However, change is being sought in the 2007 Legislative Session to protect affordability. Proposed HB 1151 would exempt land owned by CLTs from ad valorem taxation and the present cash value of the structures built upon that land would be restricted to an amount determined by the resale formula found in the ground lease.

Attachments


Cynthia W. Curry
Senior Advisor to the County Manager

COMMUNITY LAND TRUSTS

Structure & Governance	<p>Private not-for-profit corporation.</p> <ul style="list-style-type: none"> • Membership: Not required, however model CLTs operate with membership comprised of all leaseholders. Some also open membership to any resident of CLT's target community. • Board made up of lease-holders, community representatives and public representatives.
Policy Objectives	<p>Community Land Trusts (CLTs) are created to provide and preserve affordable housing for the benefit of the community. CLTs permanently retain ownership of land on which affordable homes for purchase are constructed.</p> <ul style="list-style-type: none"> • By separating ownership of the land from the structural improvements, the CLT is able to ensure that the homes remain <i>perpetually</i> affordable to very low, low and moderate income families. • Cost of home to initial and future homebuyers is significantly below market as the value of land itself is not part of the acquisition. • CLTs control land use, maximize public investment, reduce absentee ownership and act as a stabilizing force within the community. <p>Some CLTs also own affordable multi-family rental properties.</p>
Ownership	<p>Buying a CLT home offers a below market buying opportunity in exchange for giving up a portion of future appreciation of the home.</p> <ul style="list-style-type: none"> • Homeowner purchases the house, but not the land (which lowers the purchase price). • Homeowner leases the land from the CLT under a long-term (typically 99 year) renewable ground lease. • Homeowner may sell property to another income-eligible household or the CLT, subject to a resale formula. • Resale formula designed to preserve affordability of a CLT home for another income-eligible household. • Homes can be inherited. • Ground lease terms allow CLT to step in to: (a) cure mortgage defaults, forestalling foreclosures; (b) enforce restricted use of home as primary residence of income eligible families; (c) ensure continual occupancy; and (d) force upkeep and/or repairs in event that property is not being maintained or hazardous conditions develop.
Land Acquisition	<ul style="list-style-type: none"> • Government land donations • Private donations • Purchase property
Potential Funding Sources	<p><u>Land Acquisition and Development</u> Miami-Dade GOB funds HOME CDBG SHIP Surtax Tax increment financing (potential source) FHFC Pre-Development Loans</p>

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Potential Funding Sources – Cont'd	<p>Gifts of land (government and/or private) Federal Home Loan Bank Affordable Housing Program Private lending institutions</p> <p><i>Additional Sources for Rental Housing:</i> Multi-Family Bond Program FHFC Pre-Development Loans FHFC – Tax Credit Program (CLT ownership of land with improvements owned by limited partnership) FHFC Sail Program</p> <p><u>Operating Costs</u> (Pass-through costs relating to property taxes, insurance and other assessments; administrative costs).</p> <ul style="list-style-type: none"> • Initial seed money (2-3 years of operating support) by local government and cash/in-kind support of local supporters • Earned development fees • Ground Lease fees (usually insufficient) • Rental income (if operating such properties) • Government grants of general revenue • Foundation grants • HOME (CHDO designation – special HUD exemption for CLTs) • CDBG • Individual donors and grass-root fundraising. <p><u>Homebuyer Assistance</u> Single Family Bond Program SHIP Surtax HOME</p>
Property Taxes	<p>At this time, both the land and structural improvements are subject to property taxes.</p> <p><u>Change Sought in 2007 Legislative Session to Protect Affordability:</u> Proposed HB 1151 would exempt land owned by CLT from ad valorem taxation and the present cash value of the structures built upon that land would be restricted to an amount determined by the resale formula found in the ground lease. See also SB 2320.</p>
Relation to Government In-Fill Programs	<p>Could receive donation of single-family lots and/or multi-family parcels through Miami-Dade Infill Program.</p>
Prevalence in Florida	<p>Seventeen (17) Florida CLTs currently exist, including: Bahama Conch CLT of Key West (1995); Middle Keys CLT (2000); Community Housing Trust of Sarasota County (2005); Delray Beach CLT (2005); CLT of Palm Beach County, Inc. (2006); and Homestead CLT (in formation).</p> <p>Well over 100 CLTs operate throughout the United States.</p>
Keys to Success	<ul style="list-style-type: none"> • Partnership and support of the local government. • Donation of land to the CLT. • A highly functioning nonprofit with the ability to provide a pipeline of qualified home buyers. • A fully informed and engaged community of prospective home buyers; Homebuyer Counseling. • A fully informed and engaged lending community. • Appropriation of the state and local housing trust funds. <p>Source: Florida Housing Coalition Findings</p>

COMMUNITY LAND TRUSTS:

A Primer for Local Officials

A Product of Community Legal Resources
Community Land Trust Project
www.cltonline.org/

I. BACKGROUND

A. What is a Community Land Trust?

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 ownership of housing for people who would otherwise be priced out of the housing market.

CLTs are unique in that they separate ownership of land and homes. CLTs permanently own the land on which homes and other structures or facilities are built, while individuals own the home (or other structure/facility) on the land pursuant to a long-term (usually 89-year) renewable ground lease.

The CLT model does not lend itself to a “hard sell”; informed consent is essential. CLTs work to ensure that prospective homebuyers know what they are getting and what they are giving up upon purchase of a CLT home. The ground lease entered into by every CLT homeowner requires that owners live in their homes as their primary residences. CLT homeowners and their descendents have a right to occupy and use the leased land for the term of the ground lease, provided that they abide by the terms of the ground lease. In exchange for an initial subsidy from the CLT that is built into the price of the home, the terms of the ground lease place some limitations on the resale of the home—preventing resale to a household that does not qualify as low- or moderate-income, and limiting the sales price to keep it affordable. The lease lays out a “resale formula” that determines the maximum allowable price that may be charged upon resale of the home. Each CLT designs its own resale formula to give homeowners a fair return for their investment, while keeping the price affordable for other lower income people. In addition, the CLT has the right to buy each home back for an amount limited by the CLT’s resale formula.

Typically, CLTs are used in neighborhoods that are experiencing or are expected to experience gentrification. In many communities today, population growth and economic investment are driving up real estate prices so that fewer low- and moderate-income workers can afford to buy homes or rent in the communities where they work, thus posing a problem to both the workers and the business base in that community. Limited public funds are available to subsidize housing costs for lower income households. However, the gap between the amount of subsidy needed and the amount of subsidy available for affordable housing continues to widen as housing costs soar.

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According to the U.S. Census, from 1990 to 2000 the median value of owner-occupied homes increased by 97% in the State of Michigan. While housing prices have escalated, government funding for affordable housing has decreased, and private funders are unable to subsidize these projects at the level previously supported by the government. While CLTs do not build equity for low-income communities as fast as conventional homeownership would, CLTs are designed to serve a population that otherwise would not have homeownership opportunities in the current conventional market. In addition, the initial investment in the affordability of the housing is preserved for future owners, thereby maximizing the utility of that investment.

CLTs are being developed in a growing number of communities – in expanding metropolitan areas from Cleveland, Ohio to Portland, Oregon; in university communities from State College, Pennsylvania, to Boulder, Colorado; and in expensive resort communities from the Florida Keys to the San Juan Islands of Washington State. In Michigan, CLTs have been formed in Traverse City, Boyne City, and Oceana County, among others.

B. The “Basics” of the Community Land Trust Transaction

The deal that a CLT homeowner makes with the Community Land Trust is the ability to purchase an affordable house now in exchange for giving up a portion of the future appreciation of the home when the CLT homeowner sells the home later. Here is a brief outline of the typical terms of a CLT purchase:

- The Homeowner purchases the house but not the land (which lowers the purchase price).
- The Homeowner leases the land from the CLT.
- The term of the lease is usually 89 years; the lease can be renewed once for another 89 years.
- When the Homeowner sells his/her house, a portion of the appreciated value stays with the land under the ground lease, so the home price is more affordable for the next buyer.
- The CLT home can be inherited.

1. The Ground Lease

An outline of a standard community land trust ground lease is provided at www.clronline.org/clt. Although each local CLT may modify the standard CLT ground lease to meet its needs and to best serve the community and the CLT homebuyers, the basic components of the CLT ground lease remain the same. Note that in some cases the overall CLT development may be organized as a condominium, and both land and homes may be owned and leased as condominium units.

2. The “Resale Formula”

The basic element of a Community Land Trust's mechanism for preserving the affordability of a CLT home is the Resale Formula. Typically, the Resale Formula limits the CLT homeowner to some percent of the gain in value of the CLT home. When the CLT homeowner wants to sell their home they are limited by the Resale Formula in their ground lease which determines the Purchase Option Price. The Resale Formula typically provides that the Purchase Option Price is equal to:

- (a) What the CLT homeowner paid for the CLT home when s/he first bought it;
plus:
- (b) Some portion (often between 20 – 35%) of the appreciation in value of the CLT home, as determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home from the current appraised value of the CLT home at the time the CLT homeowner seeks to resell.

EXAMPLE (Assuming CLT homeowner retains 25% of the appreciation in value of the CLT home):

- CLT homeowner paid CLT \$90,000 when it purchased the CLT home.
- At the time of purchase the CLT home was appraised at \$105,000.
- At the time CLT homeowner seeks to resell the CLT home, the appraised value is \$125,000 – an appreciation in value of \$20,000.
- Twenty-five percent (25%) of \$20,000 is \$5,000.
- The Purchase Option Price equals what the CLT homeowner originally paid (\$90,000) plus twenty-five percent of the appreciation in value (\$5,000).
- Therefore, the CLT homeowner can resell their CLT home (to either the CLT or another low-income purchase) for the Purchase Option Price of \$95,000.

C. Making Homeownership Affordable

CLTs have no magic method of creating the initial affordability in housing. The greatest advantage of a CLT is its ability to preserve affordability for future generations. Nonetheless, a CLT can use a variety of tools to make housing affordable. CLTs have arranged financing for people who cannot qualify for home mortgages from conventional sources. Other CLTs have worked to minimize the hurdle of large down payments for first-time homebuyers by creating a down payment loan pool. CLT homeowners generally must be able to handle monthly mortgage payments and other costs (including the ground lease fee for use of the land). However, the “standard permitted mortgage” for a CLT homeowner will also give the CLT the ability to step in and “cure” homeowner mortgage defaults or otherwise maintain control of the property for CLT purposes in face of a potential foreclosure.

D. Transferring Ownership Between CLT Homeowners

After giving the CLT adequate notice, a CLT homeowner can sell the CLT home to an eligible buyer (i.e., someone who meets the income qualifications), transfer the lease, and move away. Since CLTs commonly retain an option to buy the CLT home, a CLT homeowner who wishes to leave may sell his/her house to the CLT. The CLT will, in turn, sell the CLT home and lease the land to a new CLT homeowner.

Long Term Effectiveness of CLTs*

Between 1984 and 2002, the Burlington Community Land Trust (BCLT) in Burlington, Vermont developed 259 moderately-priced single-family houses and condominiums. All of these homes were sold to first-time homebuyers subject to durable controls over their occupancy and resale, controls designed to maintain their availability and affordability for low-income households far into the future. The first resale of a BCLT home occurred in 1988. By the end of 2002, the BCLT had overseen the resale of 97 houses and condominiums.

This pool of resales provided a rare opportunity to evaluate the performance of a housing model that promises to secure the benefits of homeownership for persons of limited means, while achieving larger social goals like the preservation of affordability, the stewardship of public subsidies, and the stabilization of residential neighborhoods. There had been no systematic evaluation of these claims heretofore, because most of the nation's CLTs are still too new and too small to have had a significant number of resales. The BCLT was an exception. Its sizable portfolio of resale-restricted housing offered enough cases to assess how effective the BCLT had been in actually delivering – and equitably balancing – the individual benefits and the community benefits promised by its innovative model of homeownership.

The study's principal findings were as follows:

- **Preserving affordability.** Affordability not only continued between successive generations of low-income homebuyers, but improved – even when the favorable effect of falling mortgage interest rates was eliminated. The average BCLT home was affordable to a household earning 62% of Area Median Income (AMI) on initial sale. On resale, it was affordable to a household earning 57% of AMI.
- **Retaining community wealth.** Public subsidies invested in these houses and condominiums remained in the homes at resale, underwriting their affordability not only for the first buyers but for subsequent buyers as well. Only in two cases of foreclosure were these subsidies lost. More typically, these subsidies not only remained in the property but increased in value. On the initial sale, the total value of the public subsidies put into the BCLT's homes was \$1,525,148. On resale, the total value of these retained subsidies was \$2,099,590.
- **Enhancing residential stability.** Land and housing brought under the stewardship of the BCLT were rarely removed from its portfolio. Affordability and owner occupancy protections remained in place for ninety-five percent (95%) of the 259 units of owner-occupied housing developed by the BCLT between 1984 and 2002. Even in cases where homeowners defaulted on their mortgages, their resale-restricted homes stayed under the BCLT's care – neither lost to the market nor lost to absentee ownership.
- **Expanding homeownership.** Access to homeownership for persons excluded from the market was expanded. All of the households served by the BCLT earned less than median income. A majority earned considerably less than 80% of AMI.
- **Creating individual wealth.** When reselling their BCLT homes, most homeowners walked away with more wealth than they had possessed when first buying a BCLT home. Their equity gains were modest when compared to what they might have realized from the resale of an unrestricted, market-rate home, had they been able to afford such a home, but BCLT homeowners still earned a respectable return on their initial investment. Their annualized rate of return, across all 97 resales, averaged 17%. The average BCLT homeowner, reselling after five years, recouped her original downpayment and then realized a net gain in equity of \$6,184.
- **Enabling residential mobility.** Mobility was assured, with households who left the BCLT doing so for similar reasons, with similar destinations, and with similar success as homeowners buying and selling on the open market. Probably the most surprising finding, in light of the relatively modest equity gains realized by these homeowners on resale, was that a majority of them bought market-rate homes after leaving the BCLT. Sixty (60) households made the leap into market-rate homeownership; four (4) bought another resale-restricted BCLT home; sixteen (16) became renters; and one died. (The subsequent housing situations of another sixteen (16) households could not be determined, primarily because they left the state.) Among the BCLT homeowners whose subsequent housing situations were known, 74% of them bought market-rate homes within six months of re-selling their limited-equity houses or condominiums; another 5% traded their first resale-restricted home for another, choosing to remain within the BCLT.

The Burlington Community Land Trust operates in a housing market with rising prices, a growing demand for moderately-priced housing, and a chronic shortage of houses and condominiums within the financial reach of persons earning below 80% of median income. Community land trusts operating in markets different from the BCLT's may achieve different results. Nevertheless, the performance of the BCLT's portfolio of resale-restricted, owner-occupied housing provides encouraging evidence of the model's effectiveness, while lending credibility to the limited-equity homeownership programs of many other organizations, CLT and non-CLT alike, that seek to promote the legitimate interests of first-time homebuyers, without sacrificing the legitimate interests of a larger community. For over nineteen years, the community land trust in Burlington, Vermont has been doing what it promised to do.

II. SPECIAL CONCERNS OF LOCAL OFFICIALS

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.

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.

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 – 560.293) In some cases, site condominiums may be used instead of platted subdivisions.

D. Affordable Housing

A community land trust, by its nature, provides for affordable housing. Where a local government makes funding or other forms of public support available to a CLT project in support of a CLT development based on assurances of continued affordability of a proposed development, a CLT structure provides assurances that the affordability of the home(s) will be maintained indefinitely. The local government should look to the terms of the CLT ground lease to determine the income restrictions imposed (e.g., low or moderate income) and the length of time for which the ground lease shall apply (usually 89 years).

Note that in certain situations the ground lease may provide for the lifting of the affordability restrictions – generally, in deference to the entity that has financed the CLT homeowner's mortgage. However, it should also be noted that the Community Land Trust's main mission is to preserve the affordability of its CLT homes and therefore it will generally do everything in its power to prevent the CLT home from being returned to market rate.

E. 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 helps make the homeowner's interest financeable and insurable.

F. Taxation

Community land trust properties are issued two tax bills. The first, to the CLT homeowner is for the value of the improvements (i.e., the home). The second, issued to

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the CLT is for the value of the property. 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 via 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. However, because of the restrictions on transfer that apply to the property, the increase in taxable value resulting from the transfer should be limited in accordance with the resale formula in the ground lease. The taxable value of the land will not be affected since the CLT continues as the owner.

G. Financing

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

Of course, 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 FNMA offers a CLT program. The increasing acceptability of CLTs is demonstrated by the fact that 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, instead of selling a CLT mortgage, hold it itself.

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).

H. Title

The instruments used to perform the sale of the property are a ground lease of the land and a deed for the improvement on the land. 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 will often 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.

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 owners and the loan policy to reflect the nature of the interest insured as being a leasehold owners interest or a mortgage secured by the leasehold interest in the land and the full ownership of the improvements.

I. Control and Accountability of the CLT Homeowner

Leaseholders – homeowners, farm owners, or business owners – 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.

J. 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.

This document is a product of the Community Legal Resources Community Land Trust Project. Please check the CLR CLT Project website for updates to this document: www.clronline.org/clt.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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**PROPOSED COMMUNITY LAND TRUST MODEL FOR PALM BEACH COUNTY
EXECUTIVE SUMMARY**

A Community Land Trust (CLT) is a non-profit organization that owns land which it makes available on a long-term basis for a specific community use, such as affordable housing. It is a democratically-controlled entity with open membership and a board of directors comprised of CLT residents, housing industry representatives, and other community interests. CLTs are distinguished from other housing non-profits by their expressed purpose to obtain land and make it available in perpetuity for housing. Ownership of the land is separated from ownership of its specific uses. The CLT makes the land available through a long-term ground lease. The ground lease contains a formula which limits the resale price of the housing and a preemptive right to purchase which enables the CLT to find a home buyer who meets its qualifications. Combined, the resale formula and the preemptive right to purchase remove the housing from the speculative market and preserve its affordability. Being organized under 501(c)(3) of the Internal Revenue Code, a CLT is exempt from the payment of Federal income tax, and may receive tax deductible contributions and grants. A CLT may obtain property through loan- or grant-funded direct purchase, or through private donations, partial gifts, or conveyance from a State, County, or municipality. The financing of CLT operations may be accomplished through fees charged to lessees for use of CLT property.

It is proposed that Palm Beach County coordinate the establishment of a CLT. The CLT would operate in the unincorporated county and in any local municipality that so desires and is located within the Palm Beach County CDBG Entitlement Jurisdiction. The CLT would focus its efforts on providing housing affordable to households at 60 – 120% of AMI. The CLT will purchase and develop properties, secure grants and donations, interface with other agencies, establish policies, and manage financial affairs related to its holdings. The CLT will seek properties in the various regions of the county, and will contract operation/management of the properties in each region to a local entity, proposed to be an existing Community Housing Development Organization (CHDO). A CHDO is an independent entity and could not be absorbed under the CLT, however, it is proposed that CHDOs be contracted to operate CLT-owned properties, including responsibility for tenant relations; monitoring and enforcement of lease provisions; collection of fees; property maintenance; and payment of taxes, insurance, and assessments.

The County should play the lead role in establishing the Palm Beach County CLT. One County office should coordinate the participation of the individuals and agencies that will determine the structure of the CLT and develop its charter. Representation should be from local municipalities, public agencies, non-profit organizations, housing industry professionals, public interest groups, and potential CLT residents. Technical assistance will be required during start-up, and the Florida Community Land Trust Institute should be professionally engaged to assist in development of the CLT's Articles of Incorporation, By-Laws, ground leases, and other legal documents. The County Attorney's Office and the Legal Aid Society would also play pivotal roles. It is proposed that the County provide initial operational support by using HOME funds for the salaries of two full-time CLT employees for a period not to exceed two years. Additionally, it is proposed that the County initiate acquisition and development of the CLT's first two properties by donating a tract of County owned land suitable for housing development, and by providing HOME grant funds and/or Section 108 loan funds for the acquisition of a mobile home park for preservation and eventual conversion to modular housing. Once established, CLT operations will be funded primarily with its own revenues. Acquisition of additional CLT properties can be secured through public and private donations, and financed through a variety of sources, including private lending institutions; charitable foundations; the Florida Housing Finance Corporation; the PBC Housing Finance Authority; the CDBG, HOME, and SHIP Programs; and specific allocations of local government general funds. Once established

and operational, it is expected that the County role in the CLT will be significantly diminished, and limited to support for specific property acquisition and development projects.

I. OVERVIEW OF COMMUNITY LAND TRUSTS (CLT)

Introduction

The issues of land control, land availability, land use and land costs have reached critical juncture in Palm Beach County. Increase urbanization, environmental awareness, and household mobility, have caused steep and largely unaffordable increase in the cost of securing and developing land suitable for building. At the same time income has not grown to meet the increased cost of land and housing and as a result many households in the County cannot compete in the local housing market. The choices facing these households are: pay an exorbitantly high cost for housing, thereby leaving little for other essential items; combine households, thereby causing overcrowding; or move away.

The community land trust (CLT) model addresses issues of affordability, availability and security of tenure. The CLT is an organization that owns land and makes it available on a long term basis for specific community use. Ownership of the land is separated from ownership of its specific uses.

Organization and Structure

A community land trust is a non-profit organization which is created to hold land for the benefit of the community and of the individuals within the community. It is a democratically controlled organization with open membership and a Board of Directors comprised of residents of the CLT, public interest representatives and other community residents/interests.

Since CLT's are created under Section 501(c)(3) of the Internal Revenue Code, they are allowed to operate without paying Federal income tax and to receive tax deductible contributions and grants. However, their Articles of Incorporation must clearly state the intended beneficiaries and describe how the organization will operate.

CLTs are distinguished from other housing non-profits by their expressed purpose to obtain land and make it available in perpetuity for housing purposes. The CLT may choose to own both the land and the housing upon it and rent it to low-income tenants. Many non-profits also do this but there are no legal restrictions other than those pertaining to their financing that would bind them to retaining housing for the targeted income group after the financing restriction expire.

Ground Lease and Resale Formula and Preemptive Right to Purchase

The CLT makes the land which it owns available for development through a **ground lease**. This enables lessees to use the land for a restricted housing purpose over time, often up to 99 years. The ground lease is critical to the long term success of the CLT since it contains the resale formula and the CLT's preemptive right to purchase the lessee's home for a price determined by the resale formula. This enables the CLT to find a new purchaser who meets the qualifications and purposes for which the CLT was designed. Combined, the resale formula and the preemptive right to purchase remove the property from the speculative market and make housing affordable into the future.

The resale formula limits the resale price of the housing unit to maintain affordability for subsequent low-income residents and provides the owner with a fair return on investment. Three recommended approaches to developing a resale formula are:

- ***Itemized Formula*** which grants the homeowner equity for personal investment by adjusting the resale price of the home by adding and subtracting specific factors that are perceived as increasing or decreasing the value of the home. Such factors may include certain improvements,

not considered luxury, as distinct from repairs and maintenance and some inflation factor (e.g. the Consumer Price Index).

- **Appraisal Based Formula** which provides for a predetermined percentage of market appreciation of the home, determined by market appraisals both at the time of purchase and at the time of resale.
- **Indexed Formula** which adjusts the resale price according to a certain factor, such as median household income. If median income has risen a certain percentage from the time of initial purchase to the time of the resale, the new purchase price would reflect that percentage increase.

Financing of CLTs

The operation of the CLT must be largely covered by the fees that it charges its lessees for the use of its land. This fee generally covers three items, namely: pass-through costs such as property taxes, insurances and other assessments; administrative costs such as salaries; and land use cost which is optional but may be used to cover debt servicing for land purchased. The fees should not be of a magnitude to significantly affect the affordability of the housing units.

Lease fees have been generally proven to be insufficient to cover the cost of CLTs therefore it is common for other sources of funding to be sought. At the start-up stage provision of seed money by government and contributions of money and time by the CLTs' local supporters are prevalent. These contributions may be supplemented by grants from foundations or the HOME Program through a stipulation which requires that not less than 15% of a jurisdiction's overall grant be used for housing sponsored or owned by CHDOs.

A CLT can obtain control of property in several ways. These include: gift of land which would be tax deductible on the part of the donor; partial gift when the owner sells the property at a reduced price (here the seller is eligible to receive a tax benefit on the difference between the market price and the actual selling price); land conveyed by state, county and municipality; and direct purchase of property. Direct purchase of property may be financed through formal grants and loans. CDBG funds may also be used to finance land purchase and certain infrastructure development costs.

II. PROPOSAL FOR PALM BEACH COUNTY CLT

Introduction

HCD contacted some existing CLTs in Florida to ascertain specific details about their charters, and how they were administered and financed, among other things. During this process it was discovered that approximately four non-profit organizations in Palm Beach County, each with the same objective as HCD had spoken to or visited the Middle Keys Community Land Trust or the Florida Community Land Trust Institute. This interest also mirrors the Attainable Housing Task Force's desire to explore the use of CLTs as one tool to address the provision and availability of affordable housing in the County.

The coincidence of the interests outlined above points to the possibility of collaboration between the County, interested housing related non-profit agencies and agencies represented on the attainable housing task force to structure, establish and operate a CLT in Palm Beach County. This group should be supplemented by other key representations from the business sector to ensure the availability of all requisite expertise needed to establish a CLT and to supervise its operation.

In examining the possibility of forming a CLT in the County, the focus should be on assisting those families who are at 60% to 120% of the AMI especially those qualifying under the workforce housing definition (i.e. those members of the community who are professional workers such as teachers, policemen, county employees, etc.) whose income precludes homeownership in Palm Beach County.

Proposed Structure of CLT to be established in Palm Beach County

It is proposed that Palm Beach County coordinate the establishment of one CLT. This CLT will operate developments in the unincorporated county and in any municipality which participates in the County's Urban County Qualification Process to form the Palm Beach County CDBG Entitlement Jurisdiction if that municipality desires to do so. The CLT will provide oversight, policy development and corporate management to regional entities who would manage the CLT owned facilities. It will also review strategies to be employed at the regional level, review criteria for selecting the CLTs residents and manage the financial affairs of the CLT, purchase and develop properties, seek grants and donations, and interface with public agencies.

In fulfillment of its mandate to operate countywide, the CLT will divide the county into regions and seek to develop property(s) or own structures in each of the regions. The facility in each region will be operated/managed by a regional entity (proposed to be an existing Community Housing Development Organization (CHDO) as defined under the HOME Program regulations). The CHDO's management responsibilities will include: tenant relations; monitoring and enforcement of lease provisions; collection of fees; property maintenance; and payment of taxes, insurance, and assessments. Among other requirements, a CHDO is required to maintain accountability to low-income communities by:

- Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and
- Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing.

The CHDO is a distinct and separate non-profit and as such could not be absorbed under the Countywide CLT, however, it is proposed to have this regional entity contracted to operate the CLT owned facilities which are located in its region. The functions/duties of the regional entity will include the following, among others: collection of fees, payment of taxes, insurance and other assessments, development and monitoring of ground lease provisions, communication education among others.

County's Initial Input in Formation of CLT

The County should play a pivotal role in the establishment of a Palm Beach County CLT however, once formed and operational the County's role should be reduced significantly. Specific proposals for the county's involvement in the formation of a CLT are as follows:

- The county should play a lead role in bringing to the table all interest groups and undertake the coordination of this group's activities. These activities will include: drafting of legal documents, such as Articles of Incorporation and By-laws, which will be spearheaded by the County in concert with the Legal Aid Society of Palm Beach County.
- The county should, for a period of no more than two years, fund the salaries of two full time employees for the CLT. These salaries could be funded from the HOME Program which allows for 5% of the total grant to be expended on CHDO administration expenses. Thereafter, the CLT

should be able to provide for its own administrative expenses from lease fees and from grants and awards from foundations.

- The county should initiate the acquisition and development of the CLT's first two properties by:
 1. Donating a tract of County owned land which is suitable for the development of at least thirty (30) workforce affordable housing units. The county's Property and Real Estate Management Department will be charged with the responsibility of identifying the parcel to be donated. Funds to erect infrastructure to support the development of housing on the site could be sought from the County's CDBG Program (\$250,000 maximum) and from commercial lending sources, among others. CDBG funds if used will require that at least 51% of the housing units will have to be occupied by persons whose income is at or below 80% of the AMI for Palm Beach County.
 2. Using sufficient HOME Program funds, supplemented by loan funding under the County's Section 108 Loan Program, to purchase a mobile home park in central Palm Beach County. This Park will be gradually converted to accommodate modular homes, a structure which is acceptable to the County's Planning, Zoning, and Building Department. Occupants at this site will be required to be at or below 80% of the area's AMI.

The establishment of a CLT in Palm Beach County will involve the following process:

Proposed Steps to Establish a CLT in Palm Beach County

Step #1- Identification of agencies to form the CLT's Board: determine the structure of CLT, develop Articles of Incorporation and By-laws, and develop ground leases and rental leases. The membership should be diverse enough and sufficient in number so as to provide all the requisite skills, knowledge, and expertise needed for the establishment of the CLT. The membership should be from the following agencies:

Representation should be from Housing Non-Profits to be selected from among the following:- All existing CHDOs; Housing Partnership Inc.; Adopt-A-Family of the Palm Beaches; Coalition for Independent Living Options; Urban League of Palm Beach County; and The United Way.

Representation from other housing related non-profits/agencies to be selected from :- Palm Beach County LISC; Community Financing Consortium; Economic Council of Palm Beach County; Realtor Association of Palm Beach; Gold Coast Builders Association; Business Development Board, and Palm Beach Business Forum.

Municipalities and Public Agencies:- A limited number of interested municipalities in Palm Beach County who has an inter-local agreement with the County to participate as a part of the Urban County CDBG Jurisdiction; Palm Beach County Commission on Affordable Housing; Palm Beach County Land Use Advisory Board; and Housing Finance Authority of Palm Beach County.

Other Representation: - Legal Aid Society of Palm Beach County; Members of the Banking Community; residents of the CLT, public interest representatives and other community residents/interests and fair housing interests.

Step # 2- Identification of County Agency/ Department to coordinate activities of the identified agencies, schedule meetings, produce written documents.

Proposed County Departments: Planning Zoning and Building (Planning Division); Housing and Community Development (Planning Section and/or Commission on Affordable Housing); Office of Community Revitalization.

Step # 3- Discussion on type and nature of CLT by agencies.

- It will be clearly articulated that the CLT is being formed to assist workforce housing eligible households whose income is generally at 60% of the AMI but at no more than 120% of the AMI achieve homeownership or be able to access affordable rental units. This is necessary to fulfill the requirements of Section 501(c)(3) of the Internal Revenue Code which would allow the CLT to operate without paying federal income tax and to receive tax deductible contributions and grants.
- The CLT will be managed by an adequately staffed secretariat equipped to: provide oversight, policy development and corporate management to regional entities who would manage the CLT owned facilities; review strategies to be employed at the regional level; review criteria for selecting the CLTs residents; manage the financial affairs of the CLT; purchase and develop properties; seek grants and donations; and interface with public agencies.
- The day to day planning and operation of the CLT owned properties will be by CHDOs serving each region. Their specific functions would include the following, among others: handling of administrative duties related to collection of fees, payment of taxes, insurance and other assessments, monitoring of ground lease provisions, community education. These CHDOs will provide a close and easily accessible point of contact between the homeowners/tenants and the CLT.
- Although being promoted as countywide the CLT should achieve this desire over time. Initially a specific geographic area should be selected and focused on. Overtime as the CLT grows in expertise, and as its access to capital grows, it can expand its operations in other areas.

Step # 4- Identification of Agency to Provide Technical Assistance to Start-up.

Florida Community Land Trust Institute will be contacted and professionally engaged to provide technical assistance in the development of the CLT. The Institute will be required to provide specific assistance on developing the CLT's Articles of Incorporation, Bylaws, and ground leases, among others.

Step # 5- Articles of Incorporation and Bylaws

The County Attorney's Office and the Legal Aid Society of Palm Beach County could be the lead players in developing these documents. These entities should collaborate closely with the Florida Community Land Trust Institute.

Step # 6- Sources of Funding for Start-up, Operation and Property Acquisition

Start-up- Possible sources of funding are as follows: HOME Program under the provision which requires setting aside of 5% of the total grant to fund CHDO operating expenses.; CDBG program which allows funding of activities aimed at benefiting low- and moderate-income persons; contributions from Palm Beach County and other municipalities, contributions from non-profit agencies and other interested agencies/individuals.

Funding from these sources for start-up purposes are expected to be provided for no more than two years and should cover office accommodations, furniture and equipment, salaries and other start-up costs.

Operations- Possible sources of funding in addition to those mentioned above are Foundation grants and administrative charges levied by the CLT on its tenants/homeowners.

Property Acquisition and Maintenance- Possible sources of funding are: Private lending institutions; Florida Housing Finance Authority, CDBG Program (via specific application for funding), HOME Program; The SHIP Program; specific allocations from the county and municipal general funds and gift of land which would be tax deductible on the part of the donor; and land conveyed by the State, County and Municipalities.

Prepared by HCD –rev October 19, 2005
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