

**Community
land trusts:
what are
they?**

Shelter Brief 39

June 2009

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First published June 2009.

Shelter Brief 39

ISSN 1448-7950

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Shelter NSW

377 Sussex Street, Sydney NSW 2000

www.sheltersnw.org.au

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THIS BRIEF IS ABOUT COMMUNITY LAND TRUSTS, a type of nonprofit organization that acquires, owns and stewards land so that it is used for welfare purposes, such as affordable housing and related community facilities and amenities, and so that the cost of the land is effectively taken out of the cost of using that housing and community services by consumers. The organization takes the land out of the market economy and into the social economy, by not participating in normal profit-driven processes of land ownership and development.¹ It undertakes development of affordable housing and related community facilities and amenities on that land, or it leases the land to other nonprofit organizations to develop affordable housing or related community facilities and amenities on the land. In the latter case, the lease conditions provide for a peppercorn rent, but provide for the dwellings to remain ‘perpetually affordable’ through conditions on resale – in the case of affordable owner-occupied housing – and conditions on tenancy allocation and rent-setting – in the case of affordable rental housing.

There do not seem to be any community land trusts in Australia, in the sense that the concept is used in North America and Britain, though there are some models of hybrid ownership of land and dwellings for mutual benefit, and this is certainly the case with rental housing on land owned collectively by some Aboriginal groups in New South Wales through Aboriginal land councils.

The North American and British models have a philanthropic or other-directed mission which differentiate them from Australian examples.² That is, the nonprofit organization that is setup up with a mission to acquire land and take that land out of the normal market for land is consciously seeking to expand the social economy.

The primary focus of community land trusts is to acquire, own and never sell, and steward land for particular social purposes, but not to own buildings on the land (whether existing or new-build). Those buildings are sold to or provided by another party, such as a provider of affordable rental housing or an owner-occupier of a dwelling. The relation between the owner of the land, the community land trust, and the owner of the building on the land, the housing provider (etc.), is regulated through a *ground lease*. This is a legal document that sets out the rights and responsibilities of both parties. The ground lease gives the owner of a building the exclusive use of the land on which the building sits. In the USA, the lease is typically for 99 years. It is inheritable, and the inheritor of a building begins a new 99-year term, if they wish to live there.³

The ground lease requires that owners continue to live in the home as their primary residence. Subleasing is permitted only for limited periods. If owners want or need to move away permanently, they must sell the home. The lease does not allow them to continue as absentee owners. Thus, the model is not a source of *private rental* housing.

Critically, the lease is the instrument through which the community land trust delivers on its mission, because the lease sets a *rent* for use of its land on a submarket basis, typically at a ‘peppercorn’ rate that recovers some of the key costs of the community land trust in providing access to its land (e.g. US\$50 a month).⁴

Having access to land for an annual rent and for a total rent over time way below the purchase price on the open market gives a housing provider a massive cut in the overall cost of producing a dwelling. Since the community land trust wants to see more affordable housing, the housing provider will need to agree to lease provisions that facilitate the affordability of their dwellings ‘in perpetuity’.

The lease also gives the community land trust some reserve powers to step in if the owner of a building does not use the building responsibly, e.g. if they let a dwelling become derelict. The community land trust can, in such case, require the owner to make repairs. The community land trust’s interest in a matter such as this is as a protector against hazards for other owners and users of buildings on its land; also, it has a right of first purchase of the building if the owner decides to sell, so it would not want to get a building that required major renovation.

1. Land as a factor of production

The cost of land is a key contributor to the cost of acquiring a dwelling. Taking a number of cases in Sydney (see Table 1 and Table 2), it is around 20%. These two cases (below) are illustrative, not representative.

According to the Housing Industry Association, the cost of land acquisition is 21% of the total cost (to consumer) of a house and land package in Sydney.⁵ Twelve percent of the total cost of house and land package in 2004 included a sales markup on the land, being the difference between the net selling price and total development costs of the land. This markup was 30% on the total development costs. See Table 1 and Figure 1.⁶ The development in the case was for one dwelling, so the land acquisition cost per unit was \$106,500.

Comparing the 2002 and 2004 costs of a house and land package, there was a 44% increase in the cost of acquiring land, a 96% increase in the sales markup on the land, and a 68% increase in house prices⁷, for house and land packages in Sydney.

The cost of land acquisition as a proportion of the total cost of a house and land package in Sydney, at 21%, is similar to the cost of land as a proportion of the total cost of development of one multi-unit housing development in inner Sydney.⁸ See Table 2 and Figure 2. Table 2 gives outline costs of land acquisition, development and dwelling construction of a multi-unit housing development containing 39 1-bedroom units, 28 2-bedroom units and 14 3-bedroom units (plus 3 commercial spaces), in a high-land value, inner-Sydney suburb, in 2007.⁹ All the dwellings are rented as affordable rental housing, to tenants with income ranges from very low to moderate. The land cost per unit was \$71,428¹⁰ (compared with the land acquisition cost per unit of \$106,500 on the suburban fringe, as indicated in Table 1).

The point of these two different cases indicating the cost of land as a proportion of a housing development is to highlight the significant contribution, at about 20%, that basic costs associated with acquiring land – however defined – contribute to that development. What the community land trust model seeks to do is take that cost *out* of the total housing development cost for the property developer or owner-builder (and substituting for it a ground-rent).

In a greenfield outer-suburban location (should such a location be considered desirable for housing), a community land trust could meet not only the cost of acquisition of raw land, it could pay for servicing of the land, external and indirect authority requirements, any government taxes and charges, and financial and management costs; moreover it would not have a profit-driven interest in selling the land at a markup. In short, a consumer, if buying a dwelling from a nonprofit housing developer or owner-occupied housing with such costs, could be relieved of around 50% of the cost of the house and land package. This proportion could be higher given that the price of the house itself has a profit-based markup, and is greater than the construction cost of the structure. Likewise, in the case of a community land trust that takes on the role of being a housing developer of owner-occupied dwellings in inner Sydney locations, a consumer buying a dwelling from it

would be relieved of more than 20% of the cost, from not paying for the land and the costs of getting the land development-ready.

Table 1: Component costs of house and land packages, Sydney, 1992, 2002, 2004

	1992		2002		2004	
	\$	% of land cost	\$	% of land cost	\$	% of land cost
Acquisition	30,035	38	73,700	46	106,500	50
Direct servicing	13,068	17	25,250	16	36,850	17
External and indirect authority requirements	1,490	2	2,000	1	2,850	1
Government taxes and charges	19,348	25	31,750	20	34,467	16
Financial and management costs	10,725	14	18,800	12	22,389	11
Selling costs	4,236	5	7,880	5	9,830	5
Total development costs	78,902	100	159,380	100	212,886	100
Net selling price	83,000		191,256		275,677	
GST (remit ATO)	0		11,795		20,213	
	\$	% of package	\$	% of package	\$	% of package
Gross land price	83,000	54	203,051	60	275,677	55
House price	72,000	46	135,000	40	226,875	45
House and land package	155,000	100	338,051	100	502,552	100

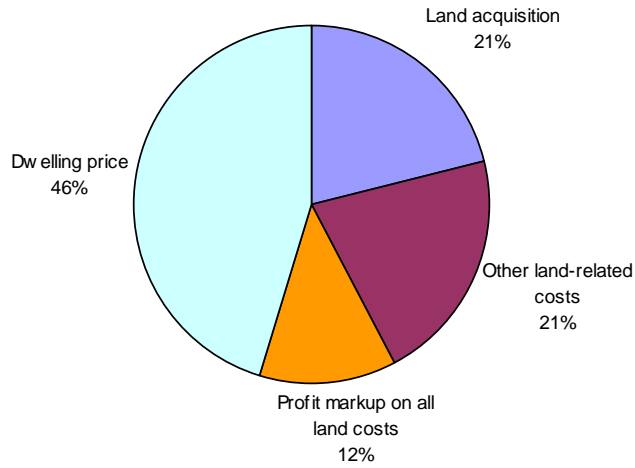
Source: National Housing Supply Council, *State of supply report 2008*, Canberra, 2009

Table 2: Component costs of a multiunit development, inner Sydney, 2007

	\$	% of project cost
Land costs	6,008,750	22
Residual costs (incl. local govt charges)	549,857	2
Other development costs	2,181,479	8
Construction costs	18,918,491	68
	27,658,577	

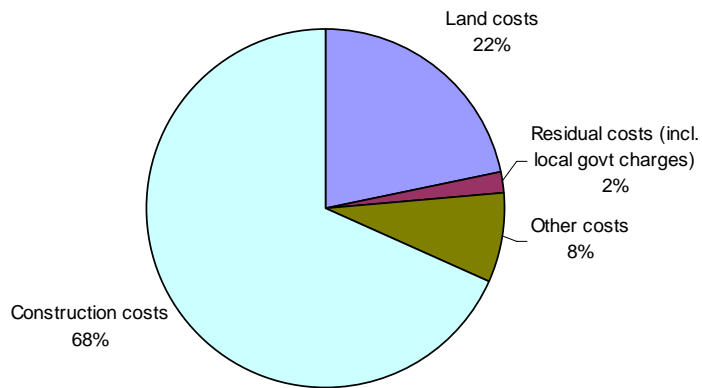
Source: City West Housing Pty Ltd, unpublished data

Figure 1: Component costs of house and land package, Sydney, 2004



Source: National Housing Supply Council, *State of supply report 2008*, Canberra, 2009

Figure 2: Component costs of a multiunit development, inner Sydney, 2007



Source: City West Housing Pty Ltd, unpublished data

2. The model

This section identifies the core elements of the community land trust ‘model’ that distinguish it from a form of land tenure, such as multiple occupancy or community title, and from nonprofit organizations with similar activities, such as (nonprofit) land banks or (nonprofit) affordable housing providers. In the USA, which has the largest number of community land trusts, the core model is applied variously in practice; indeed, the ability of differing community land trust organizations to implement the concept in different ways (models) is a strength.

2.1. Affordable housing

A community land trust ensures that dwellings built on its land are provided as affordable housing in two ways.

First, in relation to dwellings that are owned by individual owner-occupiers (and to other buildings), the ground lease includes a provision that gives the community land trust an option to buy those buildings if and when the owner decides to sell.¹¹ In any event, the purchase price is indicated in the lease, and is expressed in a formula that gives the owner/seller a fair share in their investment (being the improvements on the land) but does not give them a full share of the appreciated value of the land.¹² (See ‘The resale formula’, page 8.) While an owner of a dwelling on community land trust land does not get the full value of appreciated land in their sale price – as an owner of a private dwelling would on land they owned, they had acquired a dwelling for owner-occupation at a much cheaper price than on the open market because their original purchase price did not include the price of the land. Having bought the dwelling, the community land trust sells it to a new owner-occupier at an affordable price. In this way, the housing is kept as affordable housing in perpetuity.

A community land trust’s focus is on keeping the *dwelling* affordable, not in having a dwelling on its land lived in only by someone with a greater need; if a low-income owner-occupier becomes richer during the course of their residency, they are not asked to sell their house to the community land trust.

Ten key features of US community land trusts

- Nonprofit, tax-exempt corporation
- Dual ownership
- Leased land
- Perpetual affordability
- Perpetual responsibility
- Open, place-based membership
- Community control
- Tripartite governance
- Expansionist acquisition of land
- Flexible development

Source: John E Davis, *Starting a community land trust: organizational and operational choices*, Burlington Associates in Community Development, Burlington VT, 2007

Second, in relation to dwellings that are owned by a housing provider and rented to third parties as rental housing, the ground lease includes provisions that ensures the housing is affordable rental housing. Those provisions would cover eligibility criteria for allocation of a tenancy, period of tenancy, and rent-setting. Again, note that the community land trust's focus is on keeping the *dwelling* affordable, not in having a dwelling on its land lived in only by someone with a greater need; if a low-income renter becomes richer during the course of their tenancy and no longer meets the initial income eligibility criteria for a tenancy, they are not evicted because of that.

Dwelling types

The types of dwelling that are built on community land trust lands are variable. In the USA, they include cottages, flats, boarding houses, and mobile home parks.

Acquisition of dwellings

While a core role of community land trusts is to acquire land for affordable housing, it does not necessarily have to develop and construct those dwellings, and nor does it need to own those dwellings (indeed, the key feature of 'dual ownership' assumes that a community land trust owns the land but another body owns the building). The community land trust can acquire land – by buying or accepting a donation – that is vacant or has a dwelling or dwellings already on it (which it would sell to and give a ground lease to a purchaser). Where land is vacant and suitable for residential development, the community land trust can undertake the housing development (financing, design and construction) itself, or allow another property developer to do the development and on-sell and/or manage the dwellings as affordable housing. In this way, a community land trust is different from a community housing provider: it is not interested in managing affordable rental housing tenancies. A community land trust that undertakes property development does have some similarity with a nonprofit housing developer (like Blue CHP in New South Wales), but it is different in that it is not doing that to build up a portfolio of dwellings to be managed by itself (or in the case of Blue CHP, by the consortium of community housing providers that established it). Moreover, while a community housing provider might sell a dwelling that it owns (and the land it sits on) as part of a portfolio management strategy, a community land trust is committed never to sell any of its land.¹³

A community land trust is different from a community (or nonprofit) land bank in that it undertakes land-banking for a specific purpose, namely, to provide land for affordable housing. In so doing, it has similarities with another type of nonprofit land trust, a conservation land trust. The purpose of conservation land trusts is to acquire land to enable it to be used for environmental purposes such as land conservation proper, wildlife sanctuaries, etc., and to prevent development on it that is inimical to conservation values. There are quite a few examples of these in Australia, e.g. Bush Heritage Australia, Australian Rainforest Foundation, Gondwana Link, Tasmanian Land Conservancy, Wildlife Land Trust.

In the case of community land trusts for affordable housing they are clearly tasked to do urban development of their land. However, that does not mean they have to do

the development themselves. There is a recent trend for US community land trusts to eschew property development on their land and leave that role to nonprofit housing developers, to avoid duplication and to make best use of the property development skills already there in the community housing subsector. John Davis and Rick Jacobus comment:¹⁴

Development is not the CLT's forte, however. Nothing in the model's distinctive approach to ownership, organization, and operation makes real estate development easier or cheaper to do. Indeed, nothing makes a CLT a better developer than any other nonprofit or for-profit entity that has municipal support to produce affordable housing or other community facilities. Indeed, the model's real strength lies in protecting a municipality's investment and a community's assets, and in preserving access to land and housing for people of modest means. It is in the period after a project is developed that a CLT makes its most durable and distinctive contribution to a community's well-being.

The resale formula

Owner-occupiers of a dwelling on community land trust land who want to sell their dwelling must do so under conditions set by the trust (in the ground lease). These conditions are designed to *retain the subsidy* that the owner-occupier gets from having built or bought a dwelling without having to pay for the cost of land. Consequently, the seller will not get a price for their dwelling they would get if it was sold without those conditions or if the dwelling was located in the mainstream, open housing market. A buyer of a dwelling on community land trust land would need to take this into account when making a decision whether to buy it. They would, however, get *some* of the capital appreciation. And they would also get other benefits from buying a dwelling on community land trust land that they would not get as renters, namely, long-term security, a chance to build assets through affordable mortgage payments, and the opportunity to bequeath these benefits to their children.

The first substantive condition on resale is that the dwelling must be sold to someone in a target income band, typically, a very-low income or low income person.¹⁵

The second substantive condition on resale is the dwelling must be sold for no more than a maximum price which is set (in advance, in the ground lease) according to a formula that factors in affordability. The resale formula typically takes one of three main forms: an appraisal-based resale formula, a formula based on area median-income, and an affordable-housing cost formula.¹⁶

- A formula based on appraisal of the market value of the dwelling fixes the maximum resale price of the dwelling to the original purchase price (historical cost) plus a share, e.g. 25%, of any increase in the market value of the dwelling at the time of sale as appraised by a property valuator. That is, the owner is required to sell the dwelling below the market price. The community land trust's share of the capital appreciation allows it to sell the dwelling to a new owner at a price that is less than the market price, thus retaining affordability. However, if house prices are rising rapidly, then it would be hard to resell the dwelling at an affordable price.

- A formula based on an index of median incomes in an area fixes the maximum resale price of the dwelling to the original purchase price (historical cost) plus an adjustment for the annual change in the area median income.¹⁷ A new buyer with the same income-profile as the original owner should be able to buy the dwelling at an affordable price. However, if interest rates rise, then the new buyer will have higher housing costs than the original owner and the same rate of affordability would not be retained.
- A formula based on affordable housing costs fixes the maximum resale price of the dwelling to what a purchaser with a low-income (i.e. with an income less than 80% of the area median income) would be able to afford on the basis that their recurrent housing costs (mortgage repayments, property taxes, and insurance) stayed less than 33% of income, with the mortgage repayment based on the current interest rate for mortgages. However, if interest rates rise, the maximum permissible sale price will decline and the current owner, the seller, could be selling the dwelling without gaining any equity on that sale, or even be selling it at a loss. This approach retains affordability but does not allow for wealth creation for the (selling) owner-occupier, unlike the previous two formulas.

All three formulas seek to retain an element of the subsidy given to the individual consumer when providing them with affordable housing. This *subsidy retention* approach has some advantages and disadvantages compared with other models of promoting homeownership.¹⁸ One alternative could be an interest-free loan that does not have to be repaid until the dwelling is sold, with the owner paying back both the loan (principal) and a share of the appreciation of the market value of the dwelling (instead of paying interest on the loan). This approach seeks to *recapture* the value of the subsidy, the amount of the interest-free loan, taking inflation into account. The community land trust model differs from such a shared appreciation loan in that the subsidy is attached to the dwelling not to the buyer of the dwelling. This has advantages from a public interest perspective. From the perspective of a consumer (owner-occupier) it has a disadvantage in that they do not get all the capital appreciation of a dwelling if they sell it. If, as is likely to be the case, they paid for the building and improvements with no subsidy from the community land trust, they might not regard the foregoing of 75% of the value of their dwelling as fair.¹⁹

In the USA, most community land trusts (55%) use an appraisal-based formula.²⁰ And nearly half of those used 25% as the fixed percentage of the increase in the dwelling's value to include in the resale price. Very few use an affordable-housing cost formula.

Mortgages

In the USA, community land trusts have been able to negotiate 'leasehold mortgages' with financial institutions that allow the homeowner to borrow on their interest in the dwelling and also protect the interest of the trust and protect the risk of the lender. These agreements typically allow the land trust to take action, if necessary, to prevent foreclosure and the sale of the property on the open market, and allow the lender to make a claim on the borrower's dwelling and 'leasehold interest'.

Taxes

In the USA, community land trusts, as landowners, are usually liable for local government taxes on land. They have generally not sought exemption from these, as providers of affordable housing, on the ground that such a situation would cause resentment from and an inequity with other owner-occupiers, who do pay the tax.²¹ Nearly half (45%) of community land trusts recoup the amount they pay for these taxes from owner-occupiers in dwellings on their land, through the lease fee.²²

The situation in the USA with property taxes is similar to that in New South Wales, in that a property tax is levied by local governments and is the principal source of own-source revenue for local governments. But the mechanism is applied differently. In the city and county of San Francisco, for example, a property tax is paid to the city government on the basis of the market value of the property (dwelling plus land) when the dwelling was purchased, indexed at 2% per annum. Property taxes include a general tax levy (akin to general rate tax in New South Wales) plus any special rates. In the city of Chicago, a property tax is paid to the city government on the basis of the improved value of the land (land and dwellings), its 'fair market value', as assessed from time to time. US state governments do not tend to have their own property taxes, though in the state of Illinois, there is a real estate transfer tax. Whereas, in New South Wales, we have three property taxes: the 'general rate tax' of local government (taxed on the basis of the unimproved value of the land); the land tax of the state government (taxed on the basis of the unimproved value of the land) – from which the principal place of residence is exempt, and from which nonprofit organizations are also generally exempt; and state government's duty on transfer of dutiable property (taxed on the value of the dwelling or land). The key point is that an owner-occupier will be liable for local government property tax ('rates'), which is a recurrent housing cost that affects affordability.

Rental housing

Where there is rental housing on land owned by a community land trust, in the USA the provider is typically another nonprofit organization, which owns the dwellings and undertakes the property and tenancy management. It pays the community land trust for use of the land trusts' land, through a ground lease. This ground lease specifies that the rental housing that is built on its land will be allocated to tenants with very low, low or moderate incomes²³, and that the rents will be set on an affordable basis. Typically, in the USA, the ground lease does not require the community housing provider to evict the tenant if their income rises above the eligibility threshold for an initial allocation.

Few US community land trusts have gone into developing affordable rental housing themselves (whereas they have gone into developing housing for owner-occupation): this is because such housing does not expand the organization's revenue base. Davis comments: 'Done well, nonprofit rental housing is a break-even proposition, where any short-term surpluses are reinvested in the long-term sustainability of the property. Nonprofit rental housing is almost never a money-maker.'²⁴

2.2. Community facilities

In the USA, some community land trusts allow their land to be used for buildings that are used for business activities, e.g. shops, offices, outlets for welfare agencies. Some others provide land for community gardens or parks. One community land trust in the USA has teamed up with the other type of nonprofit land trust, a conservation land trust, to preserve an urban neighborhood for both open space and affordable housing.²⁵

2.3. The goal of perpetuity

A community land trust has a mission of getting affordable housing provided to very low-low income earners in ‘perpetuity’. That is an ambitious mission and one that the current community land trusts in the USA, where the first was established only in 1968, have not been tested against. But the seriousness of the commitment is indicated by two mechanisms by which the trusts seek to back up, or guarantee, that commitment.

The first is by putting into place legally-binding, contractual arrangements, in the form of a ground lease, that provide for dwellings on the land to be used for affordable housing and to be continued to be used for affordable housing. Where the dwellings are owner-occupied, the key provisions concern eligibility for purchase of a dwelling and a resale formula if the owner-occupier decides to sell (see page 8). Where the dwellings are managed by a community housing provider and on-leased, the key provisions concern eligibility for allocation of a tenancy to the provider’s tenants and affordable rents (see page 10).

The second is by putting in provisions in the land trust’s constitution that prevent, or at least make it very difficult, for the land trust to sell any land it acquires. This is a key differentiator of community land trusts from community housing providers who are also in the business of acquiring land and dwellings. The latter can freely dispose of land and dwellings as part of their portfolio management strategy. In contrast, the former are in the business of acquiring land and not disposing of it. The constitutional barriers can include provisions that require the agreement of both the trust’s board and the trust’s membership for selling land trust-owned land.²⁶

2.4. Governance

In the USA a community land trust is typically a stand-alone organization regulated as a legal entity by a state government, but it also could be a subsidiary of another nonprofit company or organization. Membership of the body is open to anyone in its service catchment area: this geographic area is the ‘community’ within which the community land trust seeks to provide its services. In some cases in the USA, a community land trust extends membership to organizations (private firms, government agencies, other nonprofit organizations) as well as individuals. In some cases, also, a community land trust accepts members living outside its service catchment area. Any person living in a dwelling on community trust land is automatically a member.

Community land trusts are run democratically, with management boards elected by the members. In the USA, the ‘classic’ arrangement is for one-third of the board’s directors to be elected by and from among members who own or are living in buildings situated on the land trust’s land (‘leaseholder representatives’), one-third to be elected by and from among members who do not own or are living in buildings situated on the land trust’s land (‘community representatives’), and one-third are then appointed by the board with the board’s appointees subject to ratification by a vote of the membership: this third comprises persons from local governments, government agencies, other nonprofit organizations, etc. (‘public representatives’).²⁷ Thus, two-thirds of the board are elected by the organization’s members. This system is a deliberate mechanism to effect checks and balances, to embed an element of ‘community control’ and to minimize the chance that the expansionist acquisitive aspect of the organization does not undermine the welfare purpose or ethos.²⁸ However, only 30% of US community land trusts have this structure.²⁹

2.5. Financing the organization

Community land trusts need financing for both recurrent activities and expansion (acquisition of new land). The sources of these are similar to those of other nonprofit organizations: private firms, government agencies, and other nonprofits (e.g. philanthropic trusts), which of course puts them in competition with other nonprofits for the funds available from those sources. In the USA from the early 1980s, the fledgling community land trust movement was helped by revolving loan fund managed by the Institute for Community Economics: this provided low-interest loans for acquisition of land, construction of affordable housing, and development of community facilities.

Once a community land trust has some land and tenanted buildings on that land, it can generate its own revenue from a fee on the ground lease. In the USA, very few community land trusts have a land portfolio big enough to generate significant income from this source, and most of them rely on those fees to help pay for operational costs.³⁰ The fee income is not, therefore, a source of financing new acquisitions.

Where a community land trust is a property developer (developing and selling dwellings for owner-occupation), it can get revenue from development fees. If a community land trust does not take on that role, it can provide other business services to the residents of owner-occupied dwellings on its land, such as marketing, and management of resales.³¹

In the USA, many community land trust have a charitable purpose³², which gives them concessional tax treatment under federal US tax law, similar to the ‘Income Tax Exempt Charity’ and ‘Deductible Gift Recipient’ tax concessions available to some nonprofit organizations in Australia.

2.6. Not common ownership

While community land trusts claim an element of ‘community control’, expressed in the tripartite governance structure that operates in a third of them (see page 11), they are not about common or communal ownership. The founders of the modern community land trust movement in the USA were very clear about this distinction: ‘The community land trust is *not* primarily concerned with *common ownership*. Rather its concern is for *ownership of the common good*, which may or not be combined with common ownership’.³³

The community land trust model might have some implications for current debates around increasing homeownership among Indigenous Australians through special arrangements on Indigenous communally-owned land. There are clear first-order differences between, on the one hand, communal ownership of land by Indigenous peoples and the provision of housing for members of that community and their kinfolk, and, on the other hand, ownership of land by a collective body that acquires the land to help house other people. The first case is a mutual development activity, whereas the second is a charitable activity.³⁴ Moreover, in the case of residents of dwellings on community land trust land, there is no presumption that the residents have any affective relationship to the land on which their home is built. The issues and prospects for homeownership on Indigenous communally-owned land are currently the focus of a research project through the Australian Housing and Urban Research Institute.³⁵ It is possible that while the two situations are different, the approaches to homeownership on Indigenous land will have lessons for the non-Indigenous or mainstream community land trust movement in Australia.

The American model also differs from the Scottish model (see ‘Section 3.4. Scotland’) in a similar way.

The community land trust model is also different from the property arrangement in New South Wales called ‘community title’, which is an arrangement among a group of owner-occupiers with freehold title on their land to collectively own and manage certain other land relevant to their amenity.

Community title

NSW law allows for owners of dwellings on land under freehold title to collectively own land that has facilities they all use. There could be a private estate of land and dwellings where the residents have a common perimeter wall and gate, common security system, internal access roads, and swimming pool, etc. This communal ownership over the shared facilities is called ‘community title’. It is similar to the common ownership of particular areas of a building that the owners of a strata-title building have, and indeed is modeled on the strata-title concept. The individual owners form an association, similar to an owners’ corporation in a strata-title scheme. The common-owned land is governed by a community plan. This form of land tenure is not compatible with the community land trust principle of separate ownership of land and buildings on a site.

Source: Community Land Development Act 1989

Leasing government-owned land for affordable housing

The community land trust model is different from systems of governments leasing land they own for affordable housing projects that exist in some countries, and in the Australian Capital Territory. The intention of these arrangements is the same, and that is, to take the cost of the purchase of land out of the cost of home-purchase. But a key difference is that the landowner is the government, not a nongovernment organization.

Retention of the land in the Australian Capital Territory in government ownership has been a special characterization of land tenure there since Federation. Leases of government land, for 99 years (for residential and commercial purposes), began to be sold in 1924, and a market in them developed. In 1971 the Commonwealth government abolished an annual rent payment for the leases. In 1996 the ACT government abolished fees for renewal of leases. There is some public support for changing the system there to one of perpetual leasehold or freehold title, but basically there is now a market for 99-year ground leases.

In 2008, the ACT government established a system where a prospective low-income homeowner could, instead of paying for the cost of land at its 99-year leasehold value, rent the land from the government at an annual rate of 2% of its unimproved value (that is, its value without a dwelling on it). The rent would not be a downpayment on purchase of the 99-year lease should the homeowner decide they wanted to buy the lease. The scheme does not apply throughout the Territory, but only on land provided by the government's Land Development Agency.

Source: 'ACT land rent scheme', <http://www.actaffordablehousing.com.au/land_rent.html>

Multiple occupancy

NSW planning law allows for a site of rural land to be owned collectively and for multiple dwellings to be built on it, with those dwellings accommodating separate households. This arrangement – called 'rural landsharing communities' or 'multiple occupancy' – is designed to assist cooperative living among separate households who have a shared commitment to sustainable use of the land and protection of environmental values. The land may not be subdivided or strata-titled, and nor may legal rights to any part of the site be assigned to an individual through means such as time-sharing, trusts, agreements, etc. The provisions apply to lots of rural and non-urban land that are larger than at least 10 hectares. Dwellings may not be built on the site of any part that is prime crop or pasture land. The owners of the land must submit a management plan to the local council for approval, covering water management, waste management, soil erosion, bush fire management, flora and fauna management, and provision and maintenance of internal roads, boundary fences, water reticulation, and service corridors for telephone and electricity cables. This form of land tenure is not compatible with the community land trust principle of separate ownership of land and buildings on a site.

Source: State Environmental Planning Policy no.15

3. Some overseas experiences

This section gives an outline of the community land trust sectors in a small number of other countries.

3.1. The USA

There are some 220 community land trusts in the USA.³⁶ The first was established in 1968, with a purpose of providing farmland to Afro-American farmers.

Most community land trusts (81%) are stand-alone entities, with a fifth (19%) operating as a program of another nonprofit organization.³⁷ Around 30% have a 'classic' tripartite board structure (as described in 'Section 2.4. Governance'). Most of them have a catchment that is larger than one neighborhood. They tend to be small organizations, in terms of operating budget and staff levels.

The sector's main activity is housing development. The sector is small, at some 6,500 dwellings.³⁸ The median number of dwellings is 25. Most trusts (80%) have less than 100 housing units (whether owner-occupied or rental). Very few community land trusts operate 'to scale'.

Half of the dwellings are owner-occupied (3,220 dwellings) and half are rented (3,275). Most trusts (95%) have dwellings on their land for homeownership, with only 5% whose dwellings were solely for rental. Overall, a minority of trusts (45%) have rental dwellings on their land.

US community land trusts report that owner-occupiers in dwellings on community land trust land have been able to manage stresses in the mortgage market better than other homeowners.³⁹ Based on a survey of its member organizations in 2008, the National CLT Network reported that mortgagees owning dwellings on community land trust land were defaulting on mortgage loans at a rate of 0.52% compared with the then (January 2009) national rate of 3.3%.⁴⁰ The Network attributed this better performance to a number of factors, including the greater affordability of dwellings on community housing trust land (compared with open market housing), the financial counseling given to purchasers of dwellings on community land trust land, monitoring of mortgagors' loans by their community and trust, and general support for the resident.

3.2. Canada

The number of community land trusts in Canada appears to be very small ('a handful', in 2005, according to the Canada Mortgage and Housing Corporation⁴¹). A study that included 8 case studies of Canadian community land trusts identified three variants of the community land trust model:⁴²

- Three of the 8 were cooperatives were set up to support the cooperative housing sector, but they found that housing cooperatives were 'not overly eager' to transfer title of lands they owned to the community land trust, which was also seen as a complex model.

- Three of the 8 operated rent-to-buy (‘lease-to-own’) programs under which they rented dwellings to tenants who had the option of purchasing the dwelling, with a portion of the rent paid to that date credited as a down-payment on a deposit for purchase. When the tenant buys the dwelling from the community land trust, they lease the land through a longterm ground lease.
- One of the 8 did not develop or manage housing, but acted as a land bank only.⁴³

3.3. England

The first recorded community land trust in England was in the 18th century, but the contemporary movement, along the American model, is both young and small. A number of nongovernment agencies and local governments did studies in the early 2000s.⁴⁴ Government ministers began committing to the concept in the mid-2000s. The Affordable Rural Housing Commission gave guarded support to the concept in a report on housing unaffordability in rural areas in 2006.⁴⁵ It was supported in the government’s housing green paper in 2007.⁴⁶ The government housing agency, the Housing Corporation (now subsumed into the Homes and Communities Agency) and a philanthropic agency, the Carnegie Trust, established a demonstration program to help the establishment of new community land trusts and to build technical capacity in housing associations to support them. This was an initiative of Community Finance Solutions, a business unit of the University of Salford. This program generated a number of studies and manuals that are resources for new community land trusts.⁴⁷

Another result of the demonstration program was the establishment of a special fund to help assist new community land trusts, by two philanthropic bodies.⁴⁸ This Community Land Trust Fund is jointly financed by the Tudor Trust and the Esmée Fairbairn Foundation, initially at £2 million, expected to help the startup of around 30 new community land trusts and construct about 50 dwellings over a 4-year period. The Fund provides funding for three purposes: a day’s consultancy support for community organizations or fledgling community land trusts on establishing their trust; a grant of up to £2,500 to a fledgling community land trust to develop a business plan; and loans to community land trusts. Another is a project to develop a mortgage product that is suited to homebuyers living on community land trust land.⁴⁹

The Homes and Communities Agency (England’s housing and regeneration agency) made its first financial grant to a community land trust in May this year, as one of the three funders of housing being developed by the Holy Island of Lindisfarne Community Development Trust.

3.4. Scotland

There are a large number of community land initiatives in Scotland that have a focus on buying land for community purposes, but not necessarily for affordable housing alone. Most of these are in rural areas and get financial support from Highlands and Islands Enterprise, an agency of the Scottish government that promotes economic and social development. Highlands and Islands Enterprise also

funds a special web site, Scottish Community Land Network, at <www.communityland.org.uk>. The activities of community land trusts there tend to be whole-of-community, that is, activities that allow general access to land for common purposes. These have included buy-out of whole districts with townships on them where the residents engage in tenant-farming (crofting). In 1993 a crofters organization bought an estate, now the North Assynt Estate, in northern Scotland.⁵⁰ In 2002 the residents of the island of Gigha bought the whole island. The largest community buyout has been of the islands of South Uist, Eriskay and Benbecula, in 2006. While provision of affordable housing might be one of the objectives of a Scottish community land trust (as it is in Gigha, where the community owns over half of the island's dwellings), the main purpose of these community land trusts is to shore up the social and economic sustainability of the whole community. Community land trusts in Scotland can benefit from a first right-to-buy of private land that becomes available for purchase, under Scottish law.⁵¹ Once land is bought under this system, it generally may only be sold to another community land trust or nonprofit organization.

The Scottish model is different from the American model (of conservation land trusts and community land trusts for affordable housing) in a number of key ways. Firstly, the purposes for which a Scottish community land trust would seek to acquire land are far more wide-ranging, being about social and economic sustainability of a community, which might also include protection of environmental values and affordable and adequate housing but is not usually restricted to those. Secondly, the Scottish organizations' claims to be 'community' organizations have a greater ring of 'authenticity' than the claims of welfare agencies, since they are based in actual communities and derive from local residents' and workers' actions.

Thirdly, the Scottish community land trusts are focused on sustainability of rural communities. Fourthly, they draw on existing land-use practices that value communal use of land and accept leasing arrangements for use of certain parcels of land, e.g. for tenant farming; these practices and values are culturally-specific to the Celtic zone in Scotland.⁵² Fifthly, they have access to institutionalized funding mechanisms, in particular grants programs for community improvement run by the National Lottery. Sixthly, they can take big chunks of real estate out of the speculative and open market for land⁵³, not just pockets. The Scottish government does not seem to have made a commitment to supporting community land trusts on the 'American model'.⁵⁴

3.5. Wales

The Welsh government has a commitment to promoting the expansion of community land trusts in Wales.⁵⁵ It has funded a nonprofit nongovernment organization, Land for People, which operates as a resourcing body to encourage and pilot community land trusts in Wales and bordering parts of England.⁵⁶

3.6. Kenya

Common ‘ownership’ of land is, not surprisingly, a feature of land tenure in many societies (including Indigenous Australians), and some of those inspired the modern community land trust movement.⁵⁷ The erosion of native title systems of land tenure and their replacement by freehold title, with greater incorporation of local economies into the global economy, can result in loss of ownership through property speculation and intimidation. Interestingly, in such a context, in Kenya, the American model of community land trusts was piloted in one town, to provide affordability and security to residents who had been living in informal settlements (squatting) in tandem with an upgrading of the settlements, on land that was owned by the government.⁵⁸ The residents of an informal settlement in the town of Voi had voted in 1993 for the community land trust model, which had similarities with their practice of building, owning and selling makeshift housing with no expectation that they had any formal claim on the land. The American model had a number of advantages to prevent a key problem elsewhere with ‘land reform’ projects, namely the selling by beneficiaries of land with freehold title of that land for a ‘quick dollar’, the emergence of rich, absentee landlords, and the emergence of a poor, tenant underclass (in poor quality housing). Those advantages were the model’s emphasis on community participation on land management, bans on absentee ownership, restriction on the sale of land, provisions for community control of land, and retention of individual ownership rights such as the right to sell improvements.⁵⁹

The initiative in Voi was not replicated at other settlements inside Kenya, where the national government was committed to replacing communal ownership of land with individual ownership, and where many planners saw the model as a lesser form of homeownership being provided to the poor compared with the (normal) form of homeownership available to richer people.⁶⁰ Beyond this fundamental question, internal governance and management issues around the program in the settlement led to some dissatisfaction among residents, and an increase in support for freehold title.⁶¹ This case study seems to show the pitfalls in importing a model from another society with different cultures and institutions: key among those pitfalls, however, were challenges that are relevant to the model in its heartland, namely, the difficulty in maintaining a robust (or ‘genuine’) element of community control over the operations of the community land trust, and the dilemmas in dealing with the lure of the seemingly superior model of owner-occupation (which is only not pursued because of the homeowners’ poverty), freehold title.

4. Comment

The distinctive contributions that the community land trust approach makes to housing affordability is in taking the cost of land – a significant cost in its own right and the major force impacting on the price of a dwelling in tight housing markets – out of the equation for a prospective owner-occupier or nonprofit provider of rental housing, and further, expansively acquiring land to build up a bank of land that is outside normal market processes.

Where community land trust land is leased to individual owner-occupiers, the dwelling they build on it (or purchase from a property developer who has built on it) is affordable housing as a result of the cheaper purchase price (in the absence of a land and speculative components) and associated lower mortgage repayments. The owner-occupier of a dwelling on land trust land has virtually all the benefits of normal homeownership: surety of occupation, the right to quiet enjoyment, the right to make improvements, the right to bequeath to kin, etc. What they do not have is a right to capitalize on appreciation in value of the land (which they do not own) or of all the improvements. The typical ground lease used by US community land trusts requires residents to waive any rights to the improvements of their dwelling (the renovations, etc., they make to their dwelling): if they sell the dwelling, they cannot take the new fittings, etc., away.⁶² Further, the lease allows them a minority proportion of the appreciation of the value of the dwelling if they sell it (see page 8). The resale formula gives expression to the notion of *subsidy retention* (see page 9), which has obvious appeal to nonprofit providers of affordable housing. This might not appeal, though, to many prospective homeowners. When discussing a proposal for a community land trust in a poor, mainly Afro-American, neighborhood in the US city of Lexington, Steven Bourassa asks whether homebuyers would choose a dwelling in a community land trust estate if there are affordable homeownership options elsewhere in that city, sometimes with subsidies, and with little or no restrictions on an owner's equity interest.⁶³ Nevertheless a homeowner who sells their dwelling should expect to be better off than when they bought in. Indeed, a survey of 97 homeowners who resold dwellings through the Burlington Community Land Trust (as it was then called), between 1988 and 2002, found that 34 got no gain from appreciation of the dwelling and 63 did so: in the case of the latter, the rate of return on their initial investment averaged 20%.⁶⁴ Of those 97 sellers, over half (60) bought new dwellings for owner-occupation in the open market (with 4 buying new dwellings from the Burlington Community Land Trust).

This suggests the community land trust model to homeownership might not be able to compete with normal market-housing, but it should be able to *complement* it as another option.

One of the challenges for homepurchasers of dwellings on community land trust could be access to a mortgage loan. In the USA, homepurchasers of dwellings on community land trust land can access mortgages through Fannie Mae (a government-backed secondary mortgage operator), but access is limited by tight underwriting standards. A number of homepurchasers on community land trust land have accessed mortgages insured by the Federal Housing Administration (a

government mortgage insurer), but generally this has not been easy. The National Community Land Trust Network and the Shared Equity Coalition are seeking changes to the Federal Housing Administration's guidelines to make it easier for homebuyers to access its loan product.⁶⁵ In England, likewise, the lack of ready availability of a suitable mortgage product has been a barrier to development of community land trusts promoting homeownership. The University of Salford's Community Finance Solutions unit is working with mortgage lenders to develop a solution that will suit everyone: the community land trust, the part-equity homebuyer, and the lender.

In a number of countries where homeownership is promoted on Indigenous communally-owned land, there are special loan products or arrangements that recognize that the home purchaser does not bring individual equity in the land. In New Zealand, Papakainga loans are available for building or buying dwellings on Māori land held in multiple ownership. The loan is secured over the dwelling only, not the land. The homeowner must have the agreement of all landowners, or trustees if the land is administered by a trust. In the USA, the Indian Home Loan Guarantee Program is a mortgage product specifically for American Indian and Alaska Native families and organizations on native lands and within an approved Indian area. In Canada, Indian and Northern Affairs Canada guarantees loans ('ministerial loan guarantees') for financing for projects, including housing, on First Nation reserves. In Australia, Indigenous Business Australia is developing a loan product, Home Ownership on Indigenous Land, for homeowners who wish to build a privately-owned dwelling on communally-owned land: this is linked with current Commonwealth government plans to change tenure arrangements on Indigenous-owned land. The point of these examples is to show that it is possible to develop a tailored product, or modify access to an existing product, to allow for mortgages for home purchase where the owner does not have freehold title on the land.

Whether a community land trust seeks to provide land for affordable home purchase or affordable rental, it would need to consider whether it wants to have a property developer role in relation to the dwellings – and then sell the dwellings directly to homebuyers, or sell the dwellings to a community housing provider for affordable rental. The basic feature of the 'classic' model is a separation of the owner of the land from the owner of the buildings on it. But this does not preclude a property development role. A key question for new community land trusts in Australia will, therefore, be what their core business is and how involvement in any related businesses activities deliver economies of scope and scale (or *diseconomies of scope* and scale).

Notes

1. The two key elements for locating a trading activity or enterprise in the social economy are the *social property principle* and a *distribution constraint*. The social property principle refers to the net assets of the organization belonging to the organization as a whole. This arrangement leads to a distribution constraint: any trading surpluses are not distributed as profits to members, and members do not benefit financially from the sale of any assets. (Jack Quarter, Jorge Sousa, Betty Jane Richmond and Isla Carmichael, 'Comparing member-based organizations within a social economy framework', *Nonprofit and Voluntary Sector Quarterly*, vol.30, no.2, June 2001, p.354)
2. This distinction between 'mutual nonprofits' and 'publicly-oriented nonprofits' is also used by Quarter, Sousa, Richmond and Carmichael: mutual nonprofits are inwardly-oriented to their members, and publicly-oriented nonprofits are outwardly-oriented, either to the public at large or to a specific public (e.g. people in poverty). As they say (p.352): 'No value judgment is made about inward and outward ...'
3. Beneficiaries of a deceased estate who are not family of the owner, have not already lived in the dwelling, are not of low or moderate income, or do not intend to live in the dwelling, must sell the dwelling and get the proceeds from the sale.
4. In the USA, some community land trusts charge \$100 a month for the ground lease (ground rent), but most charge in the range of \$25-50, which is below the market value of the leasehold, to assist in housing affordability for the residents (John Emmeus Davis and Rick Jacobus, *The city-CLT partnership: municipal support for community land trusts*, Lincoln Institute of Land Policy, Cambridge MA, 2008, p.22).
5. Housing Industry Association data cited in National Housing Supply Council, *State of supply report 2008*, Canberra, 2009, p.126, Table A3.6. The report does not give information on the size of the 'typical' lot or the dwelling (or number of bedrooms) or whether the data are averages from all house and land packages sold in the survey year.
6. Figure 1 is derived from the data in Table 1, on page 4.
7. We might infer that the large increase in house prices in this period was not a direct function of equivalently large increases in construction costs of the dwellings, but a result of the speculative component of housing pricing, especially in an overheated market; economists generally accept that land prices grow at a different rate than the cost of buildings, and this can be observed in the way that the prices of established dwellings in urban areas generally outstripped the prices of new dwellings over the last few decades, and in regional variations in house prices between more favored locations (where land is scarcer) and less favored locations (Morris A Davis and Jonathan Heathcote, 'The price and quantity of residential land in the United States', *Journal of Monetary Economics*, vol.54, no.8, November 2007, pp.2595-2620). The house price reflects the growth in the rate of the price land and of the price of structures: Davis and Heathcote suggest that the US house price boom from the mid-1990s to mid-2000s was driven by a 160% appreciation in real land prices (p.2606).
8. The category, land acquisition, in Table 1 does not equate to the category, land costs, in Table 2, because the data sources bundle different cost items: the qualification implicit in the word 'similar' needs to be stressed. A 20% figure for land value as the proportion of the value of a house is reported for the USA by Edward L Glaeser and Joseph Gyourko, 'The impact of building restrictions on housing affordability', *FRBNY Economic Policy Review*, June 2003, p.22.
9. The housing developer in this case was a nonprofit organization so the costs it had to meet would be different from those of a private-sector property developer.
10. This average is actually the average of all 84 units (81 residential units and 3 commercial spaces).

11. This is the case with most (80%) of US community land trusts (Yesim Sungu-Eryilmaz and Rosalind Greenstein, *A national study of community land trusts*, Working Paper no. WP07YS1, Lincoln Institute of Land Policy, Cambridge MA, 2007, p.29).

12. John Emmeus Davis and Amy Demetrowitz note that: 'Equity gains from a form of housing that remains stubbornly out of reach of the lower-income households served by the BCLT may not be the best standard against which to judge whether the BCLT's homeowners earned a "fair" return when reselling their homes.' (*Permanently affordable homeownership: does the community land trust deliver on its promises? A performance evaluation of the CLT model using resale data from the Burlington Community Land Trust*, Burlington Community Land Trust, Burlington VT, 2003, p.20).

13. See 'Section 2.3. The goal of perpetuity', page 11.

14. Davis and Jacobus, p.36.

15. US definitions of very low, low, and moderate income households are similar to those in New South Wales, with very-low income households having less than 50% of the area median income, low-income households having 50% and more but less than 80% of the area median income, and moderate-income households having 80% and more but less than 120% of median area income. Of the 186 respondents to a 2006 survey of US community land trusts, 80 had dwellings accommodating very-low income households, just over 100 had dwellings accommodating low-income households, over 30 had dwellings accommodating moderate-income households, and about 5 had dwellings accommodating households with income higher than the moderate-income threshold (Sungu-Eryilmaz and Greenstein, p.20); these data include owner-occupied and rental dwellings.

16. Rick Jacobus and Jeffrey Lubell, *Preservation of affordable home ownership: a continuum of strategies*, Policy Brief, Center for Housing Policy, (Washington DC), 2007, pp.20-21.

17. The area median income is the median household income for the area, data on which are issued by the US Department of Housing and Urban Development.

18. Jacobus and Lubell, pp.14-19.

19. Bourassa ('The community land trust as a highway environmental impact mitigation tool', *Journal of Urban Affairs*, vol.28, no.4, September 2006, p.413) reports that the Burlington Community Land Trust (now Champlain Housing Trust) changed its resale formula in the mid-2000s so that lessees got 25% of the total appreciation (that is, of buildings and land), not just 25% of improvements of the building, in recognition that the standard formula 'was an inadequate return to lessees'.

20. Sungu-Eryilmaz and Greenstein, p.31.

21. John Emmeus Davis, *Starting a community land trust: organizational and operational choices*, revised edn, Burlington Associates in Community Development, Burlington VT, 2007, p.78.

22. Sungu-Eryilmaz and Greenstein, p.33.

23. See note 15.

24. Davis, p.65.

25. Marcia Caton Campbell and Danielle A Salus, 'Community and conservation land trusts as unlikely partners? The case of Troy Gardens, Madison, Wisconsin', *Land Use Policy*, vol.20, no.2, April 2003, pp.169-180.

26. Davis, p.76. A community land trust would probably want to sell land that has been donated to it but is not within its service area (catchment) or is not suitable for affordable housing or other uses, and use the sales revenue for its purposes. In the USA, in some cases, community land trusts allow sale of donated land solely with the approval of the land trust's board (and not of the membership, as well) where the land cannot be used for affordable housing and where no leaseholders will be displaced because of the sale (Davis 2007, p.76, f.33).

27. Davis, p.5, 70-72.

28. Davis (p.8) comments: 'For CLTs that favor development over organizing, especially where a CLT program has been grafted onto the structures and programs of an existing community development corporation or where a CLT has been initiated by a municipal government, there has been a tendency to modify, dilute, or even abandon membership features or board features that make a CLT directly accountable to a local constituency of lower-income residents.'
29. Sungu-Eryilmaz and Greenstein, p.22.
30. Davis, p.55.
31. Davis, p.58.
32. The US Internal Revenue Service defines this: 'The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.'
33. International Independence Institute, *The community land trust: a guide to a new model for land tenure in America*, Center for Community Economic Development, Cambridge MA, 1972, p.1.
34. See note 2.
35. Paul Memmott, Christina Birdsall-Jones, Mark Moran and Stephen Long, 'Indigenous home ownership on communal title lands', Positioning Paper no. 112, Australian Housing and Urban Research Institute, Melbourne, 2009; and see <http://www.ahuri.edu.au/publications/projects/p20501/>.
36. National CLT Network, 'Annual mortgage foreclosure survey shows community land trusts continue to beat the market', media release, Boulder CO, USA, 6 March 2009, p.2.
37. The information in this section largely comes from Sungu-Eryilmaz and Greenstein. Their paper reports on a mailed survey of all 186 community land trusts and community land trust programs (within another organization) operating at the time. The response rate was 65% and there were 119 usable returns. Of the 64 unreturned questionnaires, 40% had been sent to community land trusts considered to be active, 28% to trusts considered dormant, 12% to new trusts being planned, and 9% to trusts with no property (Sungu-Eryilmaz and Greenstein, p.8).
38. This number of dwelling (actually, 6,495) is based on the dwellings stewarded by the 65% of US community land trusts who responded to a survey conducted by the Lincoln Institute of Land Policy in 2006 (Sungu-Eryilmaz and Greenstein). Even if that number was doubled, the sector would still comprise only 0.1% of the dwellings in the USA, and 0.3% of the assisted housing dwellings in the USA.
39. National CLT Network.
40. The data were provided by 50 community land trusts with homeownership dwellings (just under a quarter of the total number of American community land trusts). They reported on 1,930 mortgagees, 0.52% of whom had mortgages in foreclosure. Another 2.42% of their mortgagees were behind in mortgage payments for 90 or more days ('seriously delinquent'), compared with the then national rate of serious delinquency of 3.74% for prime mortgages and 23.11% for subprime mortgages.
41. Canada Mortgage and Housing Corporation, 'Critical success factors for community land trusts in Canada', *Research Highlight*, Socio-economic series 05-010, Ottawa, April 2005.
42. Canada Mortgage and Housing Corporation, pp.2-3.
43. The eighth case study was of a community land trust on Montreal that fell over and was dissolved; the Canada Mortgage and Housing Corporation *Research Highlight* (mentioned above) gives no substantive information on the circumstances, but refers to strong NIMBY opposition in the community to the community land trust as a factor in its failure.

44. See HACAS Chapman Hendy and Trowers & Hamblins, 'Community land trusts: report on a feasibility study', Birmingham WAR, June 2002, and Greater London Authority, 'Community land trusts and mutual housing models: a research report for the mayor of London', GLA Housing and Homelessness Unit, London, November 2004.
45. Affordable Rural Housing Commission, *Final report*, London, 2006, p.57.
46. Department for Communities and Local Government, 'Homes for the future: more affordable, more sustainable', London, July 2007, p.82, 110. And see Department for Communities and Local Government, 'Community land trusts: a consultation', London, October 2008.
47. See, among others, Community Finance Solutions at the University of Salford (ed.), 'Placeshaping: a toolkit for urban community land trusts', 2008; Community Finance Solutions & Wessex Reinvestment Trust, 'Then we will do it ourselves: a report on the rural community land trusts part of the Community Land Trust National Demonstration Programme', Salford, 2008; Community Finance Solutions, University of Salford and Trowers & Hamblins, 'Community land trusts: disposal models of affordable housing', 2007; and also Community Finance Solutions, University of Salford, 'Capturing value for rural communities: community land trusts and sustainable rural communities', Countryside Agency, Cheltenham GLS, March 2005.
48. See Tudor Trust, 'CLT Fund', online at <<http://www.tudortrust.org.uk/TheCLTFund/tabid/82/Default.aspx>>, viewed 3 June 2009.
49. See Community Finance Solutions, University of Salford <http://www.communityfinance.salford.ac.uk/clt_current_projects.php>.
50. Case studies of community land trusts mentioned here can be found at <<http://www.assyntcrofters.co.uk/>> (North Assynt), <<http://www.hie.co.uk/HIE-community-case-studies-2005-06/gigha-cs05.pdf>> (Gigha), and <<http://www.north-harris.org>> (North Harris).
51. Highlands and Island Enterprise, 'Community land ownership', Inverness, 2003; Highlands and Island Enterprise, 'The community right to buy: your questions answered', 2003.
52. Cultural values and practices are relevant to whether a community land trust would be viable. Bourassa (p.411) discusses a challenge in a top-down (government-driven) proposal for a community land trust in a poor, predominantly Afro-American neighborhood in the city of Lexington, Kentucky, where the Afro-American residents have a strong commitment to freehold title of land.
53. The relevant Scottish law does not, however, allow community land trusts to register an interest in purchase of private-owned land if their intention in doing so is to oppose development as such. In that way, the community ownership still operates within the generalized growth paradigm of a capitalist economy.
54. Scottish Government, 'Firm foundations: the future of housing in Scotland – a discussion document', Edinburgh, 2007.
55. 'One Wales: a progressive agenda for the government of Wales – an agreement between the Labour and Plaid Cymru groups in the National Assembly', 27 June 2007, p.17.
56. Land for People, 'Land for People', online at <<http://www.landforpeople.co.uk/>>, viewed 4 June 2009.
57. International Independence Institute, pp.7-11.
58. Ellen M Bassett and Harvey M Jacobs, 'Community-based tenure reform in urban Africa: the community land trust experiment in Voi, Kenya', *Land Use Policy*, vol.14, no.3, July 1997, pp.215-229.
59. Ellen M Bassett, 'Tinkering with tenure: the community land trust experiment in Voi, Kenya', *Habitat International*, vol.29, no.3, September 2005, p.379.
60. This criticism is one also made across the Atlantic in relation to access to homeownership for poor Afro-Americans (Bourassa, p.411). Back home, a survey of residents of 4 remote Aboriginal settlements in Queensland, where the land was

communally-owned, found a majority against the idea of homeownership without ownership of the land underneath the dwelling (M Moran, P Memmott, S Long, R Stacy and J Holt, 'Indigenous home ownership and community title land: a preliminary household survey', *Urban Policy and Research*, vol.20, no.4, 2002, p.363).

61. Bassett, pp.375-398; Ellen M Bassett, 'The persistence of the commons: economic theory and community decision-making on land tenure in Voi, Kenya', *African Studies Quarterly*, vol.9, no.3, 2007, <<http://www.africa.ufl.edu/asq/v9/v9i3a1.htm>>, viewed 25 May 2009.

62. The model ground lease prepared by the Institute for Community Economics (<<http://www.cltnetwork.org/index.php?fuseaction=Blog.dspBlogPost&postID=104>>), section 7, provides that the lessee owns all of the buildings, structures, fixtures (such as utility connections), and other improvements (such as landscaping) on the land. If they later add any of these things, these belong to them as well. Although the lessee owns the improvements, the lease controls the lessee's use and sale of them. None of these improvements may be removed from the land. When the lease ends, or is terminated early, the lessee must turn over the improvements to the community land trust. If the lease is ending, the community land trust pays the lessee for these improvements at a price set by the resale formula.

63. Bourassa, p.412.

64. Davis and Demetrowitz, pp.18-19.

65. National Community Land Trust Network, 'Mortgage financing – FHA', <<http://www.cltnetwork.org/index.php?fuseaction=Blog.dspBlogPost&postID=223>>, viewed 11 June 2009.

Resources

Handbooks you can download:

'Starting a community land trust: organizational and operational choices', by John Davis, 2007, from Burlington Associates in Community Development, Burlington USA, <<http://stores.lulu.com/burlingtonassociates>>

'The city-CLT partnership: municipal support for community land trusts', by John Davis and Rick Jacobus, 2008, from Lincoln Institute of Land Policy, Cambridge USA, <<http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=1395>>

'Placeshaping: a toolkit for urban community land trusts', by Community Finance Solutions, 2008, from University of Salford, England, <http://www.communitylandtrust.org.uk/index.php?option=com_content&task=view&id=89&Itemid=70>

'Then we will do it ourselves: a report on rural community land trusts', by Community Finance Solutions, 2008, University of Salford, England, <http://www.communitylandtrust.org.uk/index.php?option=com_content&task=view&id=86&Itemid=70>

Some useful websites:

Australian CLT Network
<http://groups.google.com.au/group/australian-clt-network>

Community land trusts, University of Salford, England
<http://www.communitylandtrust.org.uk/>

Highlands and Islands Enterprise, Inverness, Scotland
<http://www.hie.co.uk/CommunityLand.htm>

Land for People, Oswestry, England
<http://www.landforpeople.co.uk/>

National Community Land Trust Network, Portland OR, USA
<http://www.cltnetwork.org/>

Burlington Associates, Burlington VT, USA
<http://burlingtonassociates.com/resources/>

Institute for Community Economics, Washington DC, USA
<http://www.iceclt.org/>

Community land trusts: the developer that doesn't go away

By **John Emmeus Davis**, founding partner of Burlington Associates in Community Development, USA

Faced with soaring real-estate prices in some housing markets and collapsing real-estate values in many others, policymakers in the United States have belatedly begun to realize that neither supply-side programs that subsidize the production of affordably priced housing nor demand-side programs that help lower-income homebuyers to finance that housing do enough to prevent the possible loss of these homes down the road.

More attention is being paid, therefore, to housing that is wrapped in the durable garment of stewardship: models of tenure that weave into publicly assisted homeownership some of the same protections that have long been common in publicly assisted rentals. These homes are designed to last. They preserve affordability at the top of the business cycle. They promote sound maintenance at the bottom of the business cycle. They prevent foreclosures, in good times and bad.

Post-purchase stewardship is a defining feature of a family of tenures that are sometimes known as 'shared equity homeownership'. In none of these models does a homeowner go it alone. The rights, responsibilities, risks and rewards of homeownership are *shared* between the individuals who own and occupy the housing, and a nonprofit steward that stays in the picture long after these homes are sold. Shared equity homeownership takes many different forms in the United States, with the largest number of homes found in limited equity cooperatives, in resale-restricted houses and condominiums

with deed covenants lasting many years, and in community land trusts.

The model currently commanding the most attention amidst our current mortgage meltdown is the community land trust. Not only does a community land trust preserve the affordability of publicly assisted homes when markets are hot, it prevents the loss of these homes when markets are cold. At present, over 7% of all residential mortgages in the USA are in default; 3.3% of all mortgages are in foreclosure. Among the country's 200 community land trusts, by contrast, the picture is dramatically different. Despite serving populations that earn much less than median income, community land trusts have a national default rate of 1.4%, while the foreclosure rate among community land trust homeowners is only 0.5%. Such stunning performance in a time of crisis is attracting wider notice and greater governmental support for this unconventional model of homeownership.

What is a community land trust? It is a locally-controlled nonprofit corporation created to serve as the permanent repository for a community's land and as the permanent steward for any residential or commercial buildings that are located upon its land. Lands acquired by a community land trust are never resold, but are held forever in trust for the entire community. A community land trust provides for the development and *use* of its land by leasing out separate parcels to individual homeowners, cooperative housing corporations, nonprofit developers of rental housing, community gardeners



Champlain Housing Trust in Burlington, Vermont, is the largest community land trust in the USA with over 2,000 units of resale-restricted, owner-occupied housing and nonprofit rental housing in its portfolio.

or other nonprofit, governmental or for-profit entities. The ground leases used by a community land trust last for a very long time, typically for 99 years, with the community land trust collecting a modest monthly fee for the use of each leasehold.

The community land trust retains an option to repurchase any buildings lo-

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Above and opposite: a large-scale inner-city redevelopment project completed by the Sawmill Community Land Trust in Albuquerque, New Mexico, USA.

cated on its land, should their owners ever choose to sell. The resale price is determined by a formula contained in the ground lease. This formula, which usually yields a resale price that is much lower than the building's market value, is designed to give the seller a fair return for his or her investment, while giving a future buyer fair access to a home or commercial space at an affordable price. By design and by intent, the community land trust is committed to preserving the affordability of housing (and other structures) one owner after another, in perpetuity.

As owner of the underlying land and as owner of an option to re-purchase any buildings located on its land, the community land trust has an abiding interest in what happens to these structures – and to the people who occupy them. The continuing affordability of residential units and the initial eligibility of the low-income or moderate-income people who buy them are only

two of the community land trust's concerns. The ground lease also requires continuous owner-occupancy and responsible use of the premises. Should buildings become a hazard, the ground lease gives the community land trust the right to step in and force repairs. Should property owners default on their mortgages, the ground lease gives the community land trust the right to step in and cure the default, forestalling foreclosure. The community land trust remains a party to the deal, safeguarding the structural integrity of the buildings and the residential security of the occupants.

Most community land trusts in the United States target their resources toward charitable activities like redeveloping blighted neighborhoods or providing homeownership opportunities for persons too poor to enter the conventional homeownership market. There is enormous variability, however, in the types of housing that community land trusts develop (or cause to be developed) on lands that may be sprinkled across a wide geographic area. Some community land trusts focus only on detached, owner-occupied houses. Others are engaged in the development and stewardship of multi-unit townhouses, condominiums, cooperatives or nonprofit rental housing. Community land trusts have also been used for the preservation of manufactured housing communities (mobile home parks) and for the development of homeless shelters, transitional housing and single-room occupancy housing.

Many community land trusts do more than housing, however. They provide affordable retail space for neighborhood businesses. They develop community facilities and office space for other nonprofit organisations. Their lands are used for community gardens, urban agriculture or commercial

greenhouses. They protect woodlands, wetlands or open space in rural areas and maintain pocket parks in urban neighborhoods. Anything that can be built on land or can be done with land has somewhere been done through a community land trust.

When used specifically to promote homeownership, community land trusts help lower-income households to gain access to assets they would never have been able to acquire without the community land trust. Despite the limit that is placed on their home's resale price, which also limits the amount of money the homeowner will be able to realize on resale, most people who purchase a community land trust home walk away with considerably more wealth than they possessed when they came into the deal. They get back their *downpayment* when they resell. They get back whatever *forced savings* they have accumulated by making monthly payments on a mortgage. They may accumulate *voluntary savings* as well, by having housing costs that are more stable and predictable. Under most resale formulas, moreover, they will recover some (or all) of what they have spent in making *major improvements* and may be able to resell their ownership interest for more than its initial price, realizing a significant *capital gain*. Compared to the renters they were – and the renters they would likely have remained had they not purchased a community land trust home – lower-income households in community land trust housing do much better financially, when they stay and when they go.

They are never forced to go, however. They may stay as long as they want, even if their fortunes improve and their earnings increase after buying a community land trust home. A household must be income-eligible only at the time of purchase. Should the new

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homeowner's income later exceed this eligibility threshold, the community land trust will neither pressure the homeowner to move nor raise the homeowner's fee for using the underlying land. Community land trusts are in the business of ensuring permanently affordable housing, not permanently eligible people.

A homeowner may also bequeath his or her property – that is, the home and the right to use the community land trust's land – to his or her children or spouse. These heirs are not required to be income-eligible. They may continue to occupy the home they inherited. The resale restrictions remain in effect, however. Whenever the home is resold, the community land trust will re-purchase it for the formula-determined price and pass it along to another household who *is* income-eligible.

The organisational structure of the community land trust is as distinctive as its unusual approach to the ownership of real estate. The 'classic' community land trust is a stand-alone, nonprofit corporation with a membership that is open to anyone who leases land from the community land trust and to anyone who resides within the geographic area that is served by the community land trust. That service area may be small or large. Some community land trusts concentrate their holdings and activities within a single neighborhood. Others hold parcels of land that are scattered across an entire city or region.

The governing board of the community land trust is composed of three parts, each containing an equal number of seats. One third of the board is elected by members who are leasing land from the community land trust ('leaseholder representatives'). One third is elected by members residing within the community land trust's service area who are not living on the community land

trust's land ('general representatives'). And the final third is made up of local government officials, nonprofit providers of housing or social services, and other individuals who are presumed to speak for the public interest ('public representatives'). Control of the community land trust's board is diffused and balanced, ensuring that all interests are heard but no single interest is predominant.

Although the 'classic' community land trust is structured this way, there are many organisational variations. In communities where capable nonprofit housing providers already exist, there is often little need to incorporate a new community land trust from scratch. A number of community land trusts have been established as successors, affiliates or internal programs of older nonprofits. Either a pre-existing housing provider has transformed itself into a community land trust or has grafted selected elements of the community land trust model onto its own structure and programs. There are also variations in the way in which community land trusts have defined their membership or selected their governing board, including a few community land trusts where a majority of the board is appointed by a municipality. The community land trust is a dynamic model, one that is easily adapted to meet the priorities and needs of a particular community. Such malleability is part of its strength and appeal.

Its main advantage, however, is the longevity of the community land trust's commitment to stewardship. Because a community land trust never resells its land and because the use and resale controls embedded in its ground lease remain contractually enforceable for 99 years, the community land trust is a durable, dependable presence, standing behind the housing (and other facilities) it has helped

to create. When real estate markets are booming, the community land trust preserves affordability. When markets go bust, the community land trust prevents deferred maintenance and protects against foreclosure. This two-edged prowess is what led me in a recent publication to praise the community land trust and other forms of shared equity homeownership as masterly practitioners of the necessary art of 'counter-cyclical stewardship'. A colleague of mine, who leads a very successful community land trust in Albuquerque, New Mexico, says it better: 'we're the developer that doesn't go away'. ☉

John Davis visited Australia in March 2009 at the invitation of the Urban Research Centre at the University of Western Sydney – he presented a two-day course for UWS, and a seminar for UWS and Shelter NSW on community land trusts. For details on Burlington Associates in Community Development, see: www.burlingtonassociates.com. For information on the fledgling community land trust movement in Australia, email Louise Crabtree, Research Fellow and Research Program Coordinator, Urban Research Centre: l.crabtree@uws.edu.au.

