



Community Land Trusts: Creating Permanent Affordable Homeownership in Florida's High Cost Areas Title and Tax Issues

BY JAIMIE ROSS, ESQ.

The median price of existing homes throughout Florida has increased by almost 80% over the last five years. In the coastal areas we have seen land and house prices double and triple. Yet over that same five year period, the average income in Florida has risen by less than 1.5%.¹

The enormous gap between the income of Florida's workforce and the cost of homes causes local governments and affordable housing developers, as well as the private and public employment sector to look for new tools to meet the housing needs of Florida's lower paid workforce. Communities throughout Florida are losing essential workforce such as teachers and emergency workers and some are finding it difficult to attract desirable industries as prospective employers discover that their workforce will be unable to afford local home prices.

COMMUNITY LAND TRUSTS.

The tool that an increasing number of higher cost communities are looking to is "community land trusts."² Community land trusts bear no relation to Florida Land Trusts (Chapter 689, Florida Statutes) in which land may be held in trust for the benefit of another. Indeed, there is no statutory construct for community land trusts, although there is a federal definition found in the 1992 Cranston - Gonzales Act.³ Generally, a community land trust will be a Community Housing Development Organization (CHDO), with the specific purpose of acquiring parcels of land to hold in perpetuity, transferring ownership of the structural



improvements subject to the terms of the long term ground lease which provides a preemptive option to purchase back the improvement at a price determined by formula that is designed to ensure perpetual affordability for low and moderate income families.

A community land trust refers to the vehicle of separating land from building (house) for the purpose of transferring title to the house without selling the land. It also denotes the nonprofit organization that holds title to the land and manages the ground leases on community land trust properties.

There are two primary purposes for using a community land trust (CLT):

- 1. to make homeownership more affordable; and**
- 2. to keep the home affordable forever.**

Homeownership becomes more affordable because the transfer of title to the homeowner does not include fee simple interest in the land; the sales price is based on the value of the improvements, without the value of the land. The land is owned by a 501(c)(3) corporation which provides a 99 year (renewable) ground lease to the homeowner.

The ground lease has a resale provision which ensures the property will be affordable in perpetuity. The owner of the home is not permitted to sell the home on the open market.⁴ The home must be sold to an income eligible buyer at an

affordable price. The resale provision will typically provide a reasonable return to the homeowner: a price that includes whatever monies the homeowner paid to buy the home as well as appreciation based on a formula in the ground lease. The appreciation will usually be far less than standard market appreciation. The resale provision will also typically provide a right of first refusal in favor of the CLT.

From the standpoint of the buyer, the CLT home provides homeownership in a market where the alternative is to rent or move away. From the standpoint of local government, funders providing subsidy, and affordable housing advocates in general, the CLT provides a way of creating permanent housing stock with a single subsidy. From the standpoint of the employment sector, the CLT provides a stock of employee housing.

Without the use of a community land trust, affordable housing is typically created through financial subsidy either to the developer for construction or to the homebuyer for down payment and closing cost assistance, or to both the developer and the purchaser. When the affordable home is sold the government or other subsidy provider may recapture the subsidy to assist another first time home buyer. But due to the extraordinary appreciation in market prices, the recaptured subsidy falls far short of the amount needed to get a new buyer into a home. The community land trust vehicle is a remedy for this losing proposition of ever increasing need for higher and higher subsidies.

SEVERING THE HOME FROM THE LAND.

Separating improvements from the land (where the owners of the buildings have a long term leasehold estate in the land) is not an unknown concept in Florida in the context of sophisticated commercial transactions. But the concept is a new one in the arena of homeownership in Florida. Typically, in a homeownership transaction, it is customary for title to improvements to transfer via a deed transferring fee simple interest in the land. The initial question then, is what instrument is best used to transfer title to improvements severed from the land. Is it appropriate to transfer title to improvements through a bill of sale, or through a deed?

The intent of creating affordable homeownership opportunities through the community land trust vehicle is to provide as

much indicia of fee simple homeownership to the purchaser as possible. The homebuyer expects to enjoy the mortgage interest deduction on federal income taxes as well as the Florida ad valorem homestead exemption. The ground lease also provides that the homeowner has no right to remove the home from the land. In accordance with the rules for determining whether a building is personalty or realty as set forth by the Florida Supreme Court in Stiles v. Gordon Land Company and Commercial Finance Company v. Brooksville Hotel, it is most appropriate to use a deed rather than a bill of sale.⁵

AD VALOREM TAXES.

There are several questions to be addressed in regard to ad valorem taxation in Florida. The community land trust model envisions that the land will have one assessment and the improvements will have another. The first question is will the 501(c)(3) that owns the land be exempt from ad valorem taxes pursuant to Section 196.1978, Florida Statutes. It appears the answer to that question will be “no.” Although the Community Land Trust ostensibly meets the criteria of Section 196.1978, Florida Statutes, as a 501 (c)(3) providing housing to income qualified individuals, the CLT will most likely not be exempt from ad valorem taxes on the land. This is because the homeowner has a 99 year leasehold interest in the land, which the courts have held to be the functional equivalent of ownership.⁶ Fortunately, pursuant to a similar line of reasoning, as well as Section 222.05, Florida Statutes, the homeowner will enjoy homestead exemption on its leasehold property.

But how will the value of the home be assessed? This is the thorniest issue for community land trust homeowners. The fair market value of the community land trust home should clearly consider the resale formula which substantially restricts the value of the home upon sale by the owner. The owner has bought the house subject to the terms of the resale restriction and is therefore unable to sell the community land trust home for a price similar to the selling price of an identical home next door, not subject to a resale restriction. While it makes a great deal of legal and common sense for appraisers to reduce the assessed value of the home based on the resale restriction, it is likely that some county appraisers will, and some appraisers will not.



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Without legal clarity on this issue, it would be prudent for the community land trust homebuyer to prepare for the possibility of receiving a property tax bill based on the value of a house well beyond the sales price the homebuyer could realize under the terms of the resale restriction. Because of this uncertainty in the law and the detrimental effect of an assessment that is not adjusted based on the resale restriction, this is an area that may ultimately need to be addressed in the law. Fortunately, the Save Our Homes Constitutional Amendment will protect homeowners during the time they own their CLT home from increase in assessment by more than 3% per year.

LEGAL MANUAL FOR COMMUNITY LAND TRUSTS.

The Institute for Community Economics is widely accepted to be the founder of the community land trust model. The Institute for Community Economics (ICE), is a national nonprofit organization, headquartered in Springfield, Massachusetts. The Institute for Community Economics produced the seminal guide for community land trusts in 2002, The Community Land Trust Legal Manual, a Handbook for Community Land Trusts and Their Attorneys.² Counsel for a community land trust, the homebuyers of community land trust property, or community land trust lenders would greatly benefit from having a copy of the manual. The ICE Legal Manual covers such topics as designing a resale formula, designing a ground lease, financing homes on CLT land, and enforceability of the CLT's preemptive right.

Because state laws differ in regard to corporate, real property, and tax issues, the ICE Legal Manual is best supplemented with Florida specific information. To this end, the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar is presently developing a Florida Legal Manual for Community Land Trusts to supplement the ICE Legal Manual. It will address the topics discussed above as well as a variety of other Florida specific issues. One area of focus in the Florida Legal Manual will be the heightened need for legal counsel to represent the interests of the community land trust homebuyer in this novel form of homeownership and one that, although clearly designed to



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benefit the community land trust homebuyer, comes with unfamiliar restrictions on a homebuyer's right to sell at any price on the open market. The Affordable Housing Committee of the RPPTL Section is pleased to report that the Pro Bono Committee and the Affordable Housing Committee of the RPPTL section are already working together to facilitate representation of community land trust homebuyers. 

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¹ Florida Sales Report released each year by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

² Community Land Trusts have already been established in Key West, the Middle Keys, and in the city of Winter Park. CLTs are in the process of being established in Sarasota County, Martin County, and Lee County, and a number of communities in the Panhandle.

³ See Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773).

⁴ Typically, a ground lease will provide that the home may be sold on the open market, if the CLT fails to exercise its right of first refusal and the owner has tried to sell the home unsuccessfully for a certain period of time, such as 120 days.

⁵ See Stiles v. Gordon Land Company, 44 So. 2d 417 (Fla. 1950), "agreements for the sale of buildings already erected upon land rest in part, if not altogether, upon the individual facts". The facts to be considered, according to the Court in Commercial Finance Company v. Brooksville Hotel, 123 So. 814 (Fla. 1923) are actual annexation to the realty; appropriateness to the use or purpose of the realty to which it is connected; and the intention of the party making the annexation that it shall be a permanent accession to the freehold.

⁶ See Mikos v. King's Gate Club, Inc., 426 So.2d 74 (Fla.2nd DCA, 1983); Leon Co. Educational Facilities v. Hartsfield, 698 So. 2d 526 (Fla.1997).

⁷ The ICE Legal Manual is available from the Institute of Community Economics, 57 School Street, Springfield, MA 01105-1331 www.iceclt.org