

Community Land Trust Update: What's Ahead in 2019

By: Ashon Nesbitt



The growth of community land trusts (CLT) in Florida continues at an encouraging rate. In 2018, Florida experienced an increase in the number and capacity of CLTs. With support from Wells Fargo, the Florida Community Land Trust Institute (Florida CLT Institute) worked with several communities and nonprofits to establish new CLTs.

In 2019, the Florida CLT Institute continues work with local governments and nonprofits to support new and existing CLTs by promoting: subsidy retention as a smarter fiscal policy for local governments; using surplus lands to create permanently affordable housing; and standardization of best practices for CLT documentation and procedures.

Promoting Subsidy Retention as Smart Fiscal Policy

The Florida CLT Institute is sharing lessons learned with local governments and nonprofits on the value of subsidy retention. Subsidy retention is a shift in policy from the subsidy recapture models typically employed in homeownership programs. The traditional subsidy recapture approach aims to recapture the funds provided to new home buyers through a loan. For example, down payment assistance is widely provided in the form of deferred payment loans where the homebuyer makes no payments while living in the home and repays some or all the funds upon sale of the home. Those funds return to the local government as repaid or “recaptured” funds. The household originally assisted by SHIP down payment funds can then sell their home to any willing buyer, typically with no limits on price or income-eligibility. The

funds repaid or recaptured from these sales are in turn used to assist another eligible household. Unfortunately, while this approach may appear to increase revenue available to the local government because the original outlay is repaid those funds will be inadequate to address the growing affordability gap created by home prices increasing faster than incomes, and the loss of an affordable housing unit when homeowners sell.



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Alternatively, subsidy retention takes the subsidy that local governments normally provide to homebuyers in the subsidy recapture model and invests it in an affordable home. Through this one-time investment, local governments impose restrictions on the resale price and homebuyer income eligibility, thus retaining the subsidy in the unit and keeping the house perpetually affordable

to homebuyers. The most effective mechanism for subsidy retention is sale of the home subject to 99-year ground lease. The CLT maintains ownership of the land and conveys interest to the homeowner through a 99-year ground lease with resale restrictions on the sales price of the improvements (the home) and the income eligibility of subsequent purchasers. Subsidy retention through the CLT model is more effective in addressing the growing affordability gap, increases the supply

of affordable housing, and is a more fiscally responsible use of local funds.

To facilitate implementation of the subsidy retention strategy, the Florida CLT Institute, with the help of a CLT steering committee of Florida CLTs, designed language that can be applied to any down payment assistance strategy to allow those funds to work with a CLT purchase. Optimally, all SHIP jurisdictions will adopt a subsidy retention strategy in their local housing assistance plans. In 2019 we will roll out this strategy as a refinement to the CLT model strategy, which can be found in the Community Land Trust Primer (available here: <http://www.flhousing.org/publications/>).

Promoting Use of Surplus Lands to Develop Permanently Affordable Housing

In 2006 the Florida Legislature enacted §125.379 and §166.0451, Fla. Statutes, commonly referred to as the surplus land statutes. These laws require that every county and municipality, respectively, prepare an inventory list of publicly owned real properties suitable for use as affordable housing. Counties and municipalities mainly acquire surplus properties through escheatment of tax-delinquent properties, foreclosure on code enforcement liens, or through purchase of properties that were originally intended for public use, but are no longer needed. After a local government prepares the final inventory list and adopts it by resolution, it may take any of the following actions with respect to the listed properties:

1. Offer the properties for sale and use the sale proceeds to purchase land for affordable housing development;
2. Offer the properties for sale and use the sale proceeds to increase the local government fund earmarked for affordable housing;
3. Sell the properties with a restriction requiring they be developed for use as permanent affordable housing;
4. Donate the properties to a nonprofit housing organization for the construction of affordable housing; or
5. Otherwise make the properties available for use in the production and preservation of permanent affordable housing.

(§125.379(2) and §166.0451(2), Fla. Stat.).

The over-arching public benefit of surplus land policies is the opportunity to create a permanent supply of affordable housing. The optimal method for creating permanent affordability is by using a CLT or otherwise using a 99-year ground lease. The ground lease resale provisions require that subsequent buyers are income eligible and limits resale pricing to ensure affordability. The CLT also has a right of repurchase when owners wish to sell or in the event of default or foreclosure. Additional guidance can be found in Florida's Surplus Land Guidebook, including references to examples of local government partnerships with CLTs for surplus land (<http://www.flhousing.org/publications/>).

Promoting Best Practices for Documentation and Procedures

The Florida CLT Institute launched the CLT Certification Program with support from Freddie Mac at our conference in 2018. Since that time, we have been developing the program, with advice and assistance from Freddie Mac and the CLT Steering Committee; full rollout and an explanation of what it takes to receive CLT certification will take place at the 2019 conference. Certification of a CLT represents our assurance to local governments providing surplus lands and financial investment to CLTs that the organization is using best practices for both documentation and procedures. The Florida CLT Institute is also running a Fannie Mae compliance review program for CLTs so that lenders can rely upon the Florida CLT Institute review for meeting the Fannie Mae Seller Guidelines, thereby making those loans saleable on the secondary market. Visit our website to find which CLTs have passed the review. The Freddie Mac and the Fannie Mae sponsored programs are pioneering national models, and demonstrate the Florida CLT Institute's leadership in supporting a thriving ecosystem of CLTs in Florida.

For assistance in starting a CLT or with your existing CLT, contact Ashon Nesbitt at nesbitt@flhousing.org. 



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