Research Paper

Principles and practices of an affordable housing Community Land Trust model

authored by

Louise Crabtree, Peter Phibbs, Vivienne Milligan and Hazel Blunden

for the

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ACRONYMS

ACT	Australian Capital Territory
AHURI	Australian Housing and Urban Research Institute
AMI	Area Median Income
CHT	Champlain Housing Trust (US)
CLT	Community Land Trust
CPI	Consumer Price Index
DNI	Dudley Neighbors Inc (US)
DSNI	Dudley Street Neighborhood Initiative (US)
HUD	(Department of) Housing and Urban Development (US)
IRR	Internal Rate of Return
LEHC	Limited Equity Housing Cooperative
LIHTC	Low Income Housing Tax Credit
NCLT	Northern California Land Trust
NSW	New South Wales
NRAS	National Rental Affordability Scheme
UK	United Kingdom
US	United States of America

1 INTRODUCTION

This Research Paper provides an introduction to a form of shared equity housing[1] called a community land trust, which is operational in the United States of America and United Kingdom, and under exploration by various state and community organisations in Australia.

Community Land Trusts (CLTs) are not property trusts as defined by Australian Trust law. CLTs are a form of common land ownership where land is usually held by a private non-profit organisation and leased on a long term basis to members of the community or other organisations. Buildings and services on that land are then held as owned or leased properties by residents, businesses and/or other community housing providers. Ground leases are inheritable, and properties on leased land can be bought and sold at prices determined by a resale formula spelt out in each CLT's ground lease. This arrangement can offer many of the widely acknowledged benefits of home ownership, including resident control over a dwelling, security of tenure and transfer of occupancy rights, and the potential for asset wealth building. CLTs are specifically designed to achieve these benefits under financing, pricing and regulatory arrangements that improve affordability for residents, while also protecting the long term affordability of the housing that is held for future generations. Various models of CLTs have succeeded overseas, especially flourishing in the United States of America (US) where there are over 200 CLTs currently in operation. These provide affordable rental housing, cooperative housing and resale-restricted home ownership. More recently, CLTs have begun to develop in the United Kingdom (UK), where the sector is growing rapidly.

CLTs may have widespread potential application in Australia to address affordable home ownership concerns, increase the range of housing tenure options available, foster community development and social capital, and maintain a stock of perpetually affordable housing options. CLTs simultaneously address affordability issues and foster and sustain an ongoing relationship between resident households and their community. This is because they carry a dual focus on ongoing affordability and community development that enables substantial flexibility in their operation. Hence, while largely promoted or perceived as a home ownership model, CLTs can and do provide boarding houses, affordable rentals, cooperative housing and mortgage home ownership, as well as community, commercial and open spaces. Most CLTs provide more than one of these tenures options across diverse portfolios of non-contiguous sites, and many partner with other organisations to address relevant issues in individual CLT jurisdictions, such as youth unemployment, drug and alcohol issues, food security, child care and so forth.

This report forms one output of a larger AHURI-funded research project that is specifically examining the suitability and attraction of CLTs to Aboriginal and Torres Strait Islander households and their communities (see Crabtree et al., forthcoming). The central purpose of this Research Paper is to introduce a general readership to the CLT model and to review the main aspects of its utilisation in the US and the UK, as well as to provide background material for the specific research that is concerned with Indigenous housing options and CLTs.

The review presented covers: consideration of the key factors, resources and events that have shaped the genesis and development of CLTs in the US and UK; existing data on the sector's performance in providing home ownership for low- to moderate-

[1] Shared equity is defined as the 'division of value of a dwelling between more than one legal entity' (Whitehead & Yates 2007, p.6).

income populations; detailed case studies of operating CLTs that have been chosen on the basis of variations in scale, establishment trajectories, governance structures and performance in three cities in the US; and, data from two case study reviews in the UK—one rural and one urban.

The reminder of the report proceeds as follows. Chapter 2 documents the development and operation of CLTs in the USA and an overview of the performance data available. Chapter 3 provides a similar overview for the UK. Chapter 4 provides an overview of the policy and housing context in which CLTs, if adopted, would be developing in Australia, while Chapter 5 provides some concluding thoughts. The four appendices provide more detailed information on definitional and operational aspects of CLTs in the UK and the US.

2 COMMUNITY LAND TRUSTS IN THE UNITED STATES OF AMERICA

Community land trusts (CLTs) developed through a particular history in the United States of America (US) and were based on numerous antecedents, some of which originated in England, India, Israel and Australia.

2.1 Development and history of CLTs[2]

Precursors to the modern-day community land trust arose out of philosophical and practical challenges to a dominant tradition of private ownership that treated land as a speculative commodity rather than a common legacy. These CLT precursors included Henry George's single tax proposal, Ebenezer Howard's garden city model in which land was held by 'men of probity' for broader community benefit (Davis 2010a, p.6) and Ralph Borsodi's urban homesteading model which most fully articulated the key concerns and intentions that would underpin the formation of CLTs. The CLT principles were first articulated in the 1969 establishment of New Communities, Inc.—described in its Articles of Incorporation as 'a non-profit organisation to hold land in perpetual trust for the permanent use of rural communities' (Davis 2010a, p.16)—and in the 1972 publication of Swann et al.'s *The Community Land Trust: a Guide to a New Model for Land Tenure in America*. This was the first presentation of the principle of combining an ownership structure that separated title to lands and buildings with an organisational structure that included a majority of non-resident Directors on the CLT's governing board. The 1972 book also included the full text of the ground lease from a prototype leased-land community in Pennsylvania: Bryn Gweled. One of the book's co-authors, Ted Webster, suggested the name 'community land trust' to differentiate the CLT model from intentional communities and conservation land trusts; however, it wasn't until 1978 that organisations were formed that substantially combined the land leasing mechanism with the envisaged board structure (Davis 2010a).

Building on this, the first urban CLT was established in Cincinnati in 1980, partly to house and empower an impoverished and marginalised community and partly to reduce the impacts of gentrification by restricting resale prices of CLT homes (Davis 2010a). In 1982, the Institute for Community Economics extended and refined the model that Swann et al. had described 10 years earlier in a book published by Rodale Press: *The Community Land Trust Handbook*. The model portrayed in the 1982 book sought to institutionalise a difficult balancing act between the individual and community, referred to as 'finding an equitable and sustainable balance between private interests and public interests that regularly collide in the ownership and use of real property' (Davis 2010a, p.23). The interests of most concern were individual and community claims to equity, security and legacy. Moreover, the *Handbook* articulated the CLTs' obligation to not only use and develop their assets for the benefit of disadvantaged individuals, but also to support those individuals through and after the purchase of homes on leased land. This latter function was considered especially important in the context of moving low-income households into home ownership; according to Davis (2010a, p.25) 'the CLT was charged with responsibility for helping its leaseholders to hang on to their homes and to keep them in good repair.'

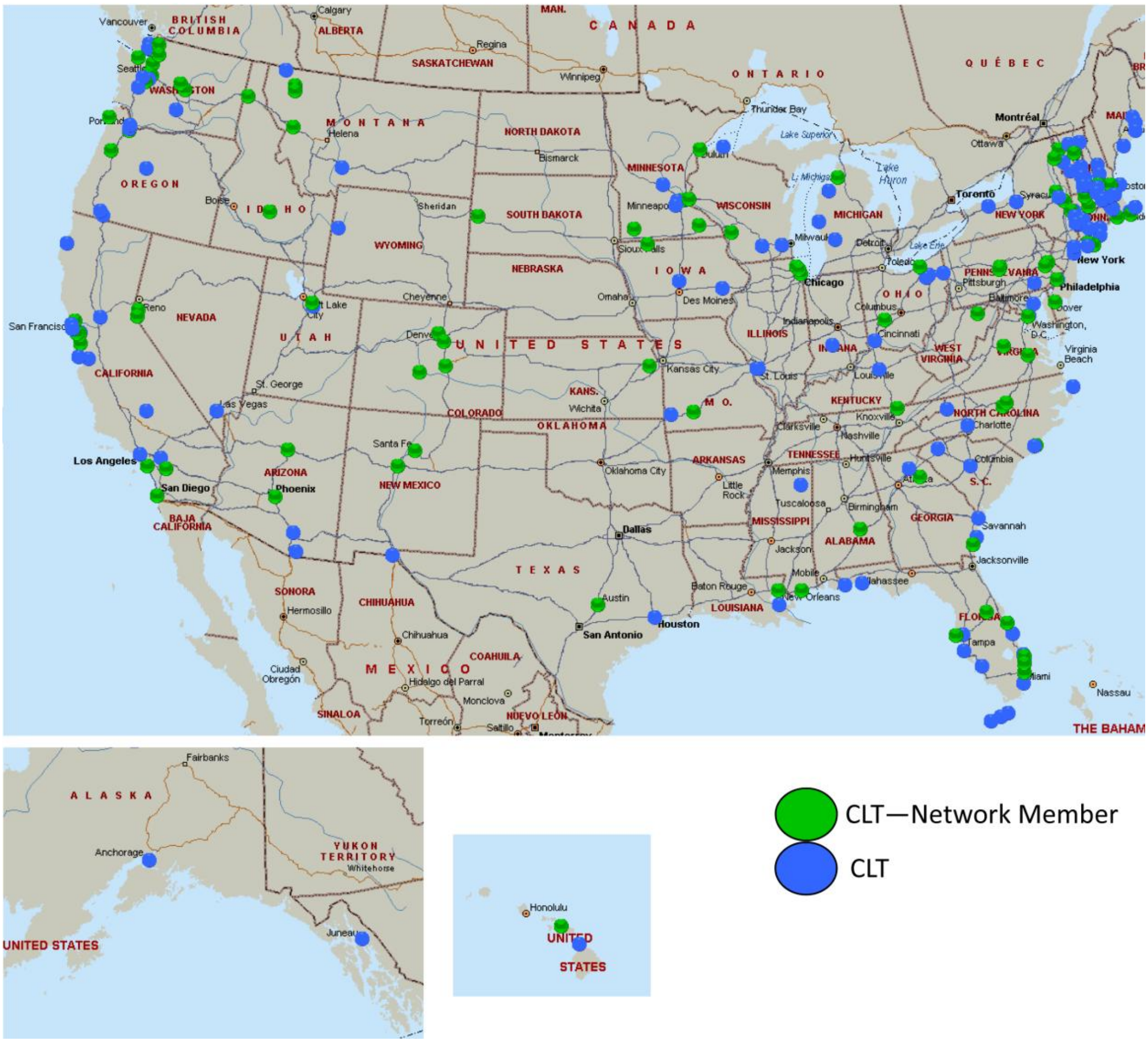
That emerging focus of CLTs on people of limited means made the organisations' activities recognised as charitable under federal tax regulations in the USA, which

[2] This section draws heavily on conversations with John Emmeus Davis as well as his thorough documentation of the CLT model's history in Davis 2010a and we are grateful for his permission to use his work and thoughts so extensively.

made CLTs eligible for additional funding and programs. Further, focusing on low-income households and low-income neighbourhoods made CLTs more relevant to policy-makers and community activists alike, as they worked to prevent displacement in the face of disinvestment or reinvestment and the withdrawal of the federal government from housing provision in the 1980s (Davis 2010a).

The 1990s saw rapid growth of the CLT sector, with both urban and rural CLTs becoming established. Davis (2010a, p.26) describes many of these organisations as sharing a view of affordable housing as 'only one component of community development, a subset of the CLT's overall mission of transforming the physical, economic, and political life of its place- based community'. Davis (2010a, p.27) states that the growth of the sector at that time was fostered by five factors: first, changes in the political and economic climate; second, the standardisation of documents, definitions and practices; third, cross-pollination of ideas and techniques amongst practitioners; fourth, an increase in public and private investment; and fifth, diversification in the model and sector.

Figure 1: Location of CLTs in the United States, 2010

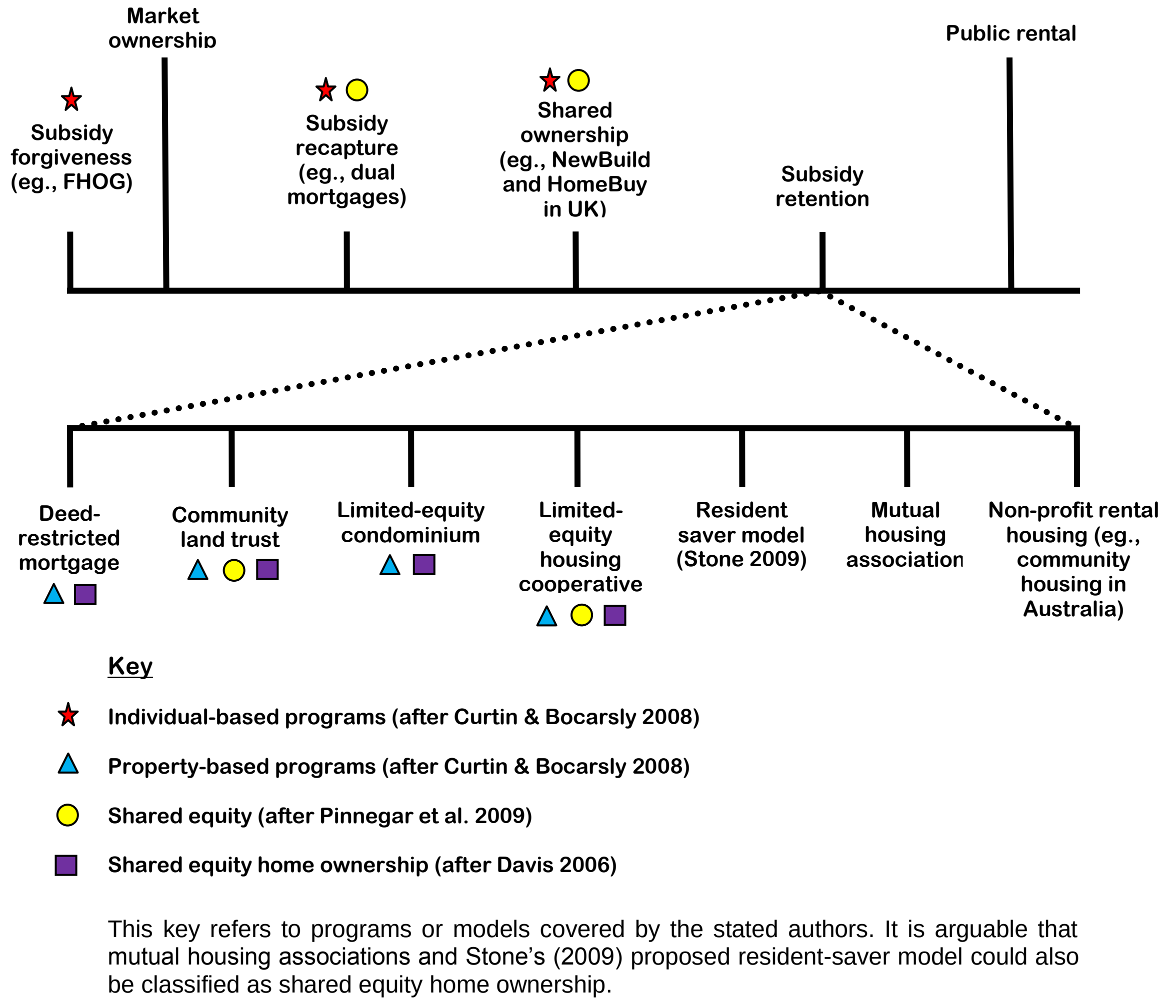


Source: National Community Land Trust Network

2.2 Context—shared equity home ownership in the United States of America

'Shared equity home ownership' is a term applied in the United States to models of home ownership that balance or share the rights, responsibilities, risks, and rewards of home ownership across multiple parties—most frequently, the home owner and either future home owners or the broader community (Davis 2006; Davis 2010b). These models have emerged in an attempt to balance the gains and privileges of the homeowner with the retention of ongoing affordability of the housing stock. Recent work states that these represent better retention of public subsidies in affordable housing than grant schemes targeting individual households in an open market (e.g. Temkin, Theodos & Price 2010; data in Davis & Stokes 2009). Shared equity home ownership models sit under the umbrella of 'subsidy retention'; see Figure 2, which provides an overview of the range of tenure options that sit between market ownership and public rental housing.

Figure 2: Spectrum of housing tenure models across the US, UK and Australia



Source: after Pinnegar et al. 2009; Jacobus & Lubell 2007

The most common types of shared equity home ownership currently operating in the United States are: deed-restricted houses and condominiums; limited-equity housing cooperatives; and community land trusts. These are also referred to as 'property-based programs'—in contrast to 'individual-based programs'—as they focus on making a particular property affordable to a targeted household type and income, and then maintaining its affordability over time (Curtin & Bocarsly 2008). In contrast, individual-based programs such as targeted grants or loans focus on making an individual household more able to buy a market-priced home, usually through second mortgages such as those being utilised in Australia (see Pinnegar et al. 2009 for an overview of these programs).

Property-based programs share several core aspects:

1. All impose a long-lasting set of contractual controls over the resale of publicly assisted, privately owned homes, ensuring that every time they change hands these homes will be resold at an affordable price to another income-eligible household. This is intended to create a permanent stock of resale-restricted, owner-occupied housing.
2. All require or involve a body dedicated to: monitoring and enforcing long-term contractual controls regulating the occupancy and affordability of owner-occupied housing units; protecting the condition of these units; and, preventing foreclosures among the owners of these units.
3. All require outside funding, both to lower the initial purchase price of homes and to subsidise operations of the organisation charged with long-term stewardship body until the portfolio of resale-restricted, owner-occupied housing becomes large enough (at around 200 units) to become self-sustaining.
4. All require education and/or training of prospective residents to firstly, ensure familiarity with home ownership requirements and the particularities of the model they are buying into and secondly, generate a pool of buyers with the knowledge and skill to meet the obligations and responsibilities that come with owning a newly built or refurbished home.
5. All require three steps: firstly, establishing the required legal structure, whether a deed covenant, a limited equity cooperative or a community land trust; secondly, determining a resale formula balancing household wealth creation and affordability retention; and thirdly, finding a local steward to oversee the contractual controls on use and resale and to support homeowners.

All of these models show the need for—and use of—intermediary parties in securing and maintaining a stock of affordably priced owner-occupied homes, whether it is a company overseeing deed restrictions, a CLT, or a cooperative (see also NeighborWorks 2007). All of these are dedicated, sector-based non-profits, which is where we see current and targeted affordable housing growth in Australia. All rely on public and/or non-profit money, including philanthropic sources. All have mechanisms in place to make foreclosure rare, including prior screening of loans or usage of approved loans and lenders; a requirement of notification of default written into the mortgage; opportunity to intervene upon default notification to cure the default; opportunity to acquire a foreclosed property; and, opportunity to continue to control the property after foreclosure—a condition unique to CLTs (Davis 2006, 2010). This section will outline core features and aspects of deed-restricted homes and limited housing cooperatives to place CLTs amongst their closer neighbours.

2.2.1 Deed-restricted houses and condominiums

Deed-restricted houses and condominiums are currently the fastest-growing form of shared equity home ownership in the United States; most likely because conceptually these are most similar to mainstream home ownership models and so are more readily understood by actors in the housing market, including financiers, buyers and real estate agents. As with all shared-equity home ownership programs, deed restriction programs require that prospective buyers pass an eligibility assessment, which can include attending and passing an educational program on the characteristics and responsibilities of home ownership.

A key weakness faced by this model has been the loss of affordability conditions through activities such as banks offering financing to mortgagors on the basis of a market—rather than a restricted—valuation of the property. A secondary weakness has been the lack of oversight of deed covenants, especially when imposed by local governments. In many places, there was once widespread belief among public officials that deed covenants were 'self-enforcing'—that is, they required no dedicated body to monitor and enforce resale controls designed to preserve the housing's affordability. Many affordable units were lost, however, when self enforcement proved to be ineffective. In many other places, an agency of local government was charged with overseeing resale controls, but their response time was slow. The agency had the first right of purchase whenever a restricted property was being sold, but if there was no government response within a certain time (usually 30–60 days), the resident was free to sell on the open market. Because of such failures, municipalities began looking to dedicated non-profit institutions to monitor and enforce affordability controls over time; this can also help build and maintain familiarity and capacity amongst local real estate agents. Organisations overseeing deed restrictions can be community land trusts or specialised entities such as HomeBricks in California, which was established as a service provider to other community housing providers and which educates and manages a pool of prospective buyers, plus oversees deed restrictions at sale.

2.2.2 Limited equity housing cooperatives

The United States has over 1.2 million households living in properties owned and operated by cooperatives; in 2004, over 400 000 of these households were in limited equity or zero equity cooperatives (Saegert & Benitez 2005; Davis 2006). In the US, there are three main types of housing cooperative: market-rate, limited equity and zero equity. Limited equity represents a compromise point between total return of profit to the resident (market rate) and no return of profit to the resident (zero equity; analogous to Australia's rental housing cooperatives). Residents in cooperatives do not own their individual units; rather, they own a share in the cooperative housing corporation that owns one or more multi-unit buildings and/or houses; ownership of a share confers a voting right, the right to hold a Board or Committee position, and the right to reside in a housing unit.

Residents in co-operatives purchase an initial share and are responsible for monthly carrying charges, which cover the cooperative's responsibilities to land taxes, insurance and a percentage of the principle and interest of the blanket loan the co-operative took to cover construction, purchase or refurbishment. Shares can be sold or bequeathed, with each limited equity housing cooperative (LEHC) linking the rate of appreciation in the transfer value of its shares to the Consumer Price Index, the change in Area Median Income (AMI), or changes in some other agreed-upon index. Share values are not protected against downturns in housing markets. If the maximum price that a new co-op member will pay for the share of a departing member is below the indexed value, the share will be transferred at the lower value. Individual LEHCs also establish a policy for determining how much a resident may recoup from major improvements they pay for themselves. Many co-ops allow residents to recoup most or all of this investment if the LEHC has given prior approval to the improvements. LEHCs have been developed as a middle ground between market- and zero-equity, attempting to balance an equity return to the resident with the ongoing affordability of share prices.

Share prices in LEHCs are invariably low and monthly carrying charges can be as low as a third of surrounding market rents. A key challenge has been overseeing and maintaining affordability criteria, which has prompted some LEHCs to partner with community land trusts, to further reduce carrying charges and ensure the retention of affordability over time. Housing cooperatives are bound by the principles of the International Cooperative Alliance, which are:

1. Voluntary and open membership.
2. Democratic member control.
3. Member economic participation.
4. Autonomy and independence.
5. Education, training and information.
6. Co-operation among co-operatives.
7. Concern for community.

Each LEHC however, establishes rules, ownership and governance mechanisms dependent on local conditions and regulations, with housing construction or purchase partly funded by government or philanthropic foundations. Each LEHCs' by-laws determine use restrictions such as preventing subletting or absentee ownership. Governing boards are elected by residents, often with managers hired from outside and possibly with property maintenance carried out by a third party, although this is usually done by residents. It has been suggested that, similarly to other shared equity home ownership programs, LEHCs work best when prospective homebuyers are educated about the particularities of their investment, required commitments and likely returns prior to purchase (Werwath 2007). According to Saegert and Benitez (2005, pp.428–9), in limited equity housing cooperatives 'affordability and tenant control contribute to economic, social, and neighbourhood benefits, as well as resident satisfaction.' Recent research suggests that mixed-income LEHCs work best in hot markets with high amenity and where moderate income earners are unable to access private ownership (Perkins 2007); a situation accurately describing Australia's capital cities and potentially relevant to the expansion of Australia's existing housing co-operative sector.

While many LEHCs adhere to the affordability criteria laid down in their by-laws, some have voted to remove affordability criteria over time, with consequent windfalls to residents and loss of affordable stock. To avoid this, many sponsors of LEHCs employ mechanisms such as long-term regulatory agreements, deed restrictions, or ground leasing through a community land trust to ensure the cooperative's continuing affordability. In addition, rapid increases in housing prices in urban areas have meant that forming an LEHC has not always in and of itself ensured affordability; hence many LEHCs partner with community land trusts to ensure upfront and ongoing affordability while retaining the resident-based control over housing through the self-management that the cooperative model enables. This combination has been a mixed success however, with some practitioners finding the multiple layers of administration confusing and unwieldy.

2.3 Core CLT traits and existing variations

According to Davis (2010a, p.9) there are three organisational characteristics that distinguish the CLT model in the United States. These are:

1. The landowner is a private, non-profit corporation with a corporate membership that is open to anyone living within the CLT's geographically defined community.

2. A majority of the governing board is elected by the CLT's membership.
3. There is a balance of interests on the governing board, where seats are allocated equally among directors representing the CLT's leaseholders, directors representing residents from the CLT's service area who are not CLT leaseholders, and directors representing the public interest.

These organisational features, along with other features pertaining to the ownership and operation of real property, are included in the federal definition of a CLT, as incorporated into 1992 amendments to the Cranston-Gonzales National Affordable Housing Act of 1990 (see Appendix 1). That fairly broad definition was created to provide a degree of familiarity and reassurance to funding agencies, financial providers and regulators, as well as consistency and flexibility for the sector.

2.3.1 The CLT Classic

The 'CLT Classic' is a somewhat whimsical term applied by the National CLT Network Academy to the basic CLT model, which was set down in the Institute of Community Economics' *Community Land Trust Legal Manual and Community Land Trust Handbook*. According to Curtin and Bocarsly (2008, p.374), the Institute of Community Economics' model lease, bylaws and articles of incorporation reflected 'ICE's belief that the purpose of a CLT is to allow the community, rather than the private market, to make decisions regarding the use of land. Therefore, the classic CLT is a demographically governed, non-profit membership organisation.'

The key features of the CLT Classic identified by Davis and Jacobus (2008) are described below.

Non-profit, tax-exempt corporation

All CLTs are registered non-profit organisations, chartered in the state in which they are located; since most CLTs focus on renewing derelict areas, providing housing to low-moderate income people, or some other charitable purpose, they are also eligible for a federal tax exemption under the US Internal Revenue Service.

Dual ownership

Once the organisation acquires parcels of land throughout a targeted area, to hold in perpetuity, any buildings existing or developed on that land are subsequently sold off to individuals, condominium owners (bodies corporate), community rental housing providers, cooperatives, or other non- or for-profit groups.

Leased land

Full usage rights to the land parcels are granted to the buildings' holders via a long-term (usually 99-year) renewable ground lease. A ground lease fee is attached to this lease and paid to the CLT. The fee is set at a level affordable to the target households; usually this is in the order of US$20–$50 per month. Commercial or for-profit lessees may be charged market land rents to cross-subsidise housing activities.

Perpetual affordability

Each CLT holds an option to repurchase any home ownership properties on its land if an owner chooses to sell. The price is determined by a resale formula contained in the ground lease. Each CLT designs its resale formula so as to try to balance equity returns to the seller with affordability to the buyer. This is intended to maintain the affordability of the stock in perpetuity while enabling a degree of equity gain to the seller.

Perpetual responsibility

As CLTs hold land in perpetuity and hold a repurchase option, the organisations have an ongoing interest in the condition of the properties and the stability of the owners. CLTs establish maintenance responsibilities in their ground leases; typically the CLTs will do major cyclical maintenance and residents do small and daily maintenance. CLTs also typically are notified by lenders if homeowners fall behind in mortgage payments and have the right to intervene to cure defaults and prevent foreclosures.

Open, place-based membership

Each CLT holds land parcels and operates within a geographically determined area. For some CLTs, this area is very small, encompassing a single neighbourhood. In 2006, 70 per cent of CLTs served more than one neighbourhood, focusing on a city, county or multiple counties; 60 per cent of CLTs served urban areas, 31 per cent suburban areas and 52 per cent served rural or small towns (Sungu-Eryilmaz & Greenstein 2007). All adults living in that target area—whether residing on CLT land or not—are eligible to become members of the CLT and to serve on its Board.

Community control

The classic CLT Board has two-thirds of its members elected from among residents of the CLT's service area—with one-third drawn from CLT residents, and one-third from non-resident CLT members.

Tripartite governance

In addition to those two-thirds, the last third of the CLT's governing board is drawn from representatives of the public at large, such as local administrators, financiers, other non-profits, local businesses, chambers of commerce, etc. This three-part structure is intended to allow residents, the broader community and the public at large to have an equal voice in the governance of the organisation and ideally, to prevent any one interest dominating.

Expansionist acquisition

CLTs aim to build and expand a mixed portfolio of properties throughout the area they serve. These are not usually physically contiguous sites—rather, CLTs aim to operate on scattered sites throughout their area and for their properties to be indistinguishable from non-CLT property.

Flexible development

The US CLT sector has undertaken development of housing ranging from boarding houses, through affordable rentals and cooperatives, to single-family houses, townhouses, and condominiums. The physical stock includes individual apartments, entire apartment buildings, duplexes, individual homes, ecovillages and cohousing, as well as community, commercial and open spaces.

Some CLTs focus on particular forms of housing depending on their local need, some provide a broad range of residential forms, while others mix these with non-residential development. Individual CLTs may undertake development themselves, or focus on their stewardship role and partner with non- or for-profit agencies when undertaking development. The common thread in these is an attempt to respond to local need and complement local existing housing provision by addressing gaps in this.

2.3.2 Variations

Against the CLT Classic template, there is a great deal of variation in programs and structures, according to the individuals involved, the organisation's origins, the funding landscape and many other factors. Some of the core areas of variation are discussed below.

Land

A number of CLTs, in addition to acting as the long-term steward for affordable housing and other buildings located on lands that are owned by and leased from the CLT, perform stewardship duties for buildings under which the CLT does not own the land. This has occurred most often in the United States where CLTs have been asked by municipal governments to monitor and enforce resale controls on affordably priced condominiums produced by private developers under a municipality's inclusionary zoning program. These inclusionary zoning units are usually scattered throughout a multi-family condominium project. Since the CLT does not own the underlying land, durable restrictions over a unit's occupancy, use, and resale are imposed through a covenant attached to the unit's deed, not through a CLT ground lease. The CLT exercises the same control over these units, however, and provides the same stewardship services as it does for those homes that are located on land that is leased from the CLT.

Resale formulae

Home ownership resale formulae can be tailored to reflect the local market and the intentions of the CLT. Some resale formulae used by CLTs are based on initial and subsequent valuations of the homeowner's property, with an agreed percentage (often 25%) of the appreciation returned to the seller. Such appraisal-based formulae are used by 55 per cent of CLTs (Sungu-Eryilmaz & Greenstein 2007), largely due to their simplicity and performance in balancing household and societal equity. Other CLTs use formulae that index a home's resale price to Area Median Income (AMI), the Consumer Price Index (CPI) or other social metrics. Depending on the aims of the CLT, a resale formula can be tailored to provide proportionally more equity the *shorter* the period of occupancy (to promote throughput into the open market) or proportionally more equity the *longer* the period of occupancy (to promote community stability). Appendix 2 provides a comparative overview of various resale formulae.

These formulae are tailored to cater to local market and community capacity, ambitions and constraints and aim to balance individual equity return with the preservation of affordability to subsequent buyers in each context.

Maintenance and improvements

CLTs vary in their policies and procedures regarding regular maintenance and capital improvement of properties. Again, these controls aim to balance householders' and the community's rights and responsibilities. Some CLTs take a forceful stance on maintenance: performing regular inspections; offering homeowner training; accumulating maintenance and replacement reserves; and, in some cases, doing fee-for-service repairs with the CLT's own staff. Other CLTs take a more hands-off approach: intervening only at the time of resale to make major repairs or do substantial rehabilitation before the property is transferred to another owner—the cost is then either subtracted from the seller's equity or split between seller and buyer.

Policies regarding post-purchase capital improvements and renovations are also highly variable from one CLT to the next. Core decisions are made along two axes regarding the nature of additions allowed and the equity gain to the homeowner on those additions. Hence, some CLTs allow all manner of renovations but do not allow equity gains on the additions, while some provide a list of approved renovations and return dollar-for-dollar the amount spent on additions, with a substantial range of further variations on these arrangements. These decisions and policies again reflect local market conditions and the aims of each CLT as regards ongoing affordability and homeowner autonomy.

Autonomy is also negotiated in the sensitive issue of property inspections. As CLTs oversee resales and have first option to buy at the time of resale of properties in their portfolio, the ongoing condition of properties is a core concern for CLTs. As such, each CLT has developed its own policy on the nature and frequency of inspections, with the aim to balance the right of the homeowner to quiet enjoyment with the right of the CLT and its service community to retain a portfolio of high quality housing.

Tenure and use options

While frequently promoted and documented as a home ownership model, CLTs underpin a wide range of tenure options, including boarding rooms, affordable rental housing, zero- and limited-cooperative housing, and mortgagor home ownership in houses, townhouses, and condominiums. Of the 186 known CLTs surveyed by the Lincoln Institute in 2006, 95 per cent provided home ownership and 45 per cent combined rentals and home ownership (Sungu-Eryilmaz & Greenstein 2007), with a handful doing rentals alone (Davis 2009 pers. comm.). Some CLTs also provide cooperative housing as part of their portfolio; such housing can be mixed-income.

In addition to their housing portfolios, many CLTs hold land on which community facilities or commercial buildings are then developed, either by the CLT or a partner organisation. These include market-rate commercial spaces as well as community facilities, including medical centres, childcare centres, aged care centres, financial counselling services, community gardens, meals kitchens and recreation centres, amongst many others. These facilities are usually the result of community lobbying and activities via the CLT. Some larger CLTs have been able to internally cross-subsidise themselves to an extent by charging market land rents to commercial lessees.

Establishment and governance

The classic CLT is described as emerging from within its community as a grassroots organisation and having a three-part board; however, there is great variation in both how CLTs form and how they are governed. As opportunistic organisations, CLTs emerge according to local capacity; CLTs have formed in isolation, or as programs within existing community housing providers or other social justice non-profits. Sungu-Eryilmaz and Greenstein (2007) found that 19 per cent of CLTs were established as programs within other non-profits, and 81 per cent as stand-alone organisations, and that stand-alone CLTs have fewer staff, more housing units and smaller operating budgets than CLT programs. CLTs that form as programs within other organisations may seed off into a stand-alone organisation once sufficient scale and capacity is achieved, or may remain as programs within the existing organisation. More recently, a few large-scale CLTs have been initiated and funded by municipalities; for example, the City of Irvine, California moved to establish a CLT to develop 10 000 homes over 10 years via a seed grant of US$250m (Sungu-Eryilmaz & Greenstein 2007).

CLT boards vary in their composition; Sungu-Eryilmaz and Greenstein (2007) found that only 30 per cent of surveyed CLTs used the tri-partite Board structure. Relationships with originating organisations also vary, where these exist. For example, Dudley Neighbors Inc. (DNI; see 2.7) is a major CLT in Boston, Massachusetts which was established by the Dudley St Neighborhood Initiative (DSNI), a non-profit community development corporation. Where the parent corporation, DSNI, has a voting membership of 6500 and a board of 34, DNI has no voting membership and a board of 11; of these, three are appointed by the city to ensure DNI does not misuse its power of eminent domain[3]. DNI is also directly accountable to DSNI, so is in effect overseen by that organisation's larger board and substantial membership. Smaller CLTs that emerge within existing organisations may similarly utilise the larger organisation's capacity in their establishment and governance.

The recent emergence of large-scale, municipally-sponsored CLTs has seen the maintenance of the three-part board; however, nominees are often screened or appointed by the sponsoring City (Davis & Jacobus 2008). It remains to be seen whether this represents a compromise to organisational democracy or negatively impacts the broader community perception and acceptance of these larger CLTs.

Buyer education, partnerships and additional services

As the CLT is a fairly unfamiliar product, many CLTs have found it necessary to educate prospective buyers on the nuances of the model, in addition to providing homeowners with financial counselling, credit management and education regarding their rights and responsibilities. The extent to which these are provided as in-house services varies; many smaller CLTs do not have the capacity to train their potential buyers, so will liaise with agencies that can perform this role. Other CLTs have formed strategic partnerships with organisations such as Habitat for Humanity, which specialise in supporting, training and working with families as they prepare for ownership of, and participate in the building of, a house. This synergy was recently formalised between Habitat for Humanity and the National CLT Network at the national level, such that the house building and capacity building programs of Habitat for Humanity can be partnered with the land acquisition and stewardship programs of the CLT sector.

2.4 Performance and monitoring of the sector

As a relatively young and informal sector, the CLT sector has not been the subject of a great deal of inquiry or centralised performance monitoring, although this has noticeably increased in the past decade, and particularly in light of the internet, as many CLTs were online and documenting their work early and fast, with academic and public attention subsequently following. Temkin, Theodos and Price (2010) ascribe relatively low reporting levels to difficulties in collecting client data, especially across multiple agencies and sites. This section presents findings from the academic literature to date, and from research at both the Lincoln Institute of Land Policy in Cambridge, Massachusetts, and the sector's own National CLT Network and Academy.

2.4.1 Explaining sector growth—Curtin and Bocarsly (2008)

The CLT sector is a newcomer to the housing scene; with the first CLTs established in the 1960s. There are now roughly 240 across the USA, with exponential growth over the intervening decades. Curtin and Bocarsly (2008) provided an overview of the reasons for the growth of the sector during the boom times of the US housing market, as well as during the bust. Those authors posit three reasons for the exponential growth of CLTs in recent history. Firstly, there is now greater acceptance of the CLT mechanism for affordable housing; secondly, there are more resources available for emerging CLTs, such as consultants, educational literature and funds; and thirdly; permanent affordability for home ownership is becoming increasingly attractive (Curtin & Bocarsly 2008, p.372). Specific aspects of Curtin and Bocarsly's (2008) core discussion are presented below.

[3] Analogous to power of compulsory acquisition in Australia.

Better return on public investment

The growth of the CLT sector during boom times in the US housing market has, in part, been attributed to that boom, with CLTs being seen as better 'bang for the buck'. That is, limited funds for affordable housing schemes were seen as better spent on models of subsidy retention, such as CLTs, than subsidy recapture, such as dual mortgage schemes or home owner grants. This was especially the case in rapidly escalating markets, where owners with second mortgages could sell the house and make windfall profits on their initial investment, while leaving the jurisdiction with a returned subsidy that was no longer adequate to assist a subsequent buyer (Curtin & Bocarsly 2008).

Removing land costs

By removing land costs from the cost of housing, CLTs make a substantial impact on housing affordability in heated markets with limited supply where land will continue to increase in value. This is especially useful in markets where land value increases will continue to outstrip income gains (Curtin & Bocarsly 2008).

Prevention of predatory lending

The recent foreclosure crisis in the USA was largely the result of predatory and unsustainable lending practices, which often exposed lower-income households to higher-rate and variable-rate mortgages. In contrast, CLTs specify the loan products they will allow their homeowners to use, in addition to providing and/or requiring financial counselling, homebuyer training and credit management for their buyers.

Intervention in defaults

In addition to screening loan products, it is also a condition of a loan made to a CLT homeowner, that the CLT be notified should the loan fall into arrears, and that the CLT be given the right to cure default. This means CLTs can step in to assist homeowners to rearrange their finances to sustain their mortgage, or can intervene and cure default such that the property is not lost from the CLT portfolio. In some instances, CLTs have then been able to subsequently lease the home back to the resident—so while the resident may have lost the mortgage, they have not lost their home. This does, however, require that the CLT has the resources to cure defaults.

2.4.2 The National CLT Network (US) Academy and Foreclosure surveys

As the growth of the sector gained momentum through the 1990s, it became apparent to sector workers and advocates that greater communication, resource sharing and representation at a national level would help strengthen the sector and make it easier for new CLTs to form. The Network essentially took over the work of the Institute for Community Economics, and incorporated in 2006. According to the Network's website (http://www.cltnetwork.org), the Network operates according to seven key principles:

1. perpetual affordability
2. community health, cohesion, and diversity
3. community stewardship of land
4. perpetual sustainability
5. representative governance
6. resident and community empowerment
7. openness to a variety of organisational structures.

The Network provides training, advocacy and resources to the sector, and has established discussion fora, email lists and annual meetings to foster communication and information exchange within the sector. In 2006, the Network also set up an Academy as a core program; the National CLT Academy develops and delivers an expanding suite of CLT training modules tailored to a range of organisational profiles. Topics include starting a CLT, working with homeowners, governance and board development, post-purchase stewardship, non-residential development of CLTs and others.

The National CLT Network has also undertaken annual foreclosure surveys during the USA mortgage crisis, with results showing a consistently lower foreclosure rates amongst responding CLTs than across the open housing market. In 2007, 2 of 3115 surveyed CLT homes had foreclosed—representing a foreclosure rate of 0.06 per cent compared to 2.0 per cent across the open market (National CLT Network 2008). At the end of 2008, 1930 CLT households were surveyed and reported a foreclosure rate of 0.52 per cent compared to 3.3 per cent across the open market (Misak 2009). Thaden (2010) reported on the performance of 42 CLTs over 2009, representing 2173 resale-restricted mortgages. That survey found a foreclosure rate of 0.56 per cent compared to 4.58 per cent on the open market. Thaden (2011) reported on delinquency and foreclosure rates during 2010 in 62 CLTs (of 216 approached) and found a foreclosure rate of 0.46 per cent amongst 3143 home owners, compared to 4.63 per cent amongst market rate homes. Table 1 summarises these results.

The foreclosure surveys highlight the challenge of building an inclusive and representative trade association at the national level, which also raises issues about the data. While there are 230–240 CLTs in existence in the USA, only half have become members of the Network so far, and as seen above, foreclosure surveys in some instances have only been able to report on some 20 per cent of the sector. The reasons for this are unclear, but some comments can be made. As a new organisation, the National CLT Network is still building its credibility and authority among its prospective constituents. Further, some practitioners feel the focus on the CLT Classic does not sit well if their organisation has a different structure to the Classic. Reducing the Network's actual or perceived focus on the Classic, partly to make Network membership attractive to more CLTs, was an item of casual discussion at the recent National CLT Network meeting. Anecdotal evidence amongst CLT practitioners suggests the Network's foreclosure surveys are not wildly inaccurate, but the Network is keen to better consolidate and represent the sector.

Table 1: CLT and open market foreclosure rates, 2007–10

Year	*Open market foreclosure rate %*	*Surveyed CLT foreclosure rate %*
2007	2.0	0.06
2008	3.3	0.52
2009	4.58	0.56
2010	4.63	0.46

Sources: National CLT Network 2008; Misak 2009; Thaden 2010; Thaden 2011

2.4.3 The Lincoln Institute of Land Policy

The Lincoln Institute of Land Policy is an independent research institute based in Cambridge, Massachusetts that has supported the development of the CLT sector over recent years through research undertaken under the auspices of its Economic and Community Development Department, as well as sponsorship of National CLT Network programs and events. Lincoln has undertaken major CLT research work, including a baseline study of the 186 CLTs known to exist in 2006 by Sungu-Eryilmaz and Greenstein. This provided the first comprehensive overview of CLT histories, programs and activities, and found that recent sectoral growth had in large part been driven by interest from the public sector, particularly with regard to ongoing affordability and subsidy retention outcomes.

The Institute has also sponsored external research into the sector, including policy focus reports such as Davis and Jacobus (2008). That report documented the shifting relationship between CLTs and municipalities and found that the growing municipal support for and involvement in CLTs brought significant advantages in terms of staff and access to public lands and/or subsidies, but could potentially erode community grassroots acceptance of the model.

For many years the Institute also supported the National CLT Academy—the training arm of the National CLT Network. In 2010 Lincoln published *The Community Land Trust Reader*, the first text documenting the sector's origins, history, performance and possible future directions, and documenting the growing international development of the model.

2.4.4 The Urban Institute

In 2010 the Urban Institute released a study of seven various shared equity home ownership schemes operating in the US—these were three CLTs, two limited equity housing cooperatives and two deed restriction programs. The study selected programs with at least 60 properties in their portfolios, at least 40 resales within their portfolio and adequate and accessible client data (Temkin, Theodos & Price 2010). The case studies presented data from a wide range of contexts, including a deed restriction scheme in San Francisco which indexes resales to Area Median Income. This is noteworthy as to date most of the reporting on shared equity home ownership schemes in the US has focused on areas with less intense market pressures than major global cities. Table 2 provides an overview of the report's findings.

Table 2: Summary of financial outcomes for shared equity programs

	ARCH* (King County, WA)	**Champlain Housing Trust (Burlington, VT)**	**Citywide Inclusionary Affordable Housing Program (San Fran, CA)**	**Dos Pinos (Davis, CA)**	**NCLT (Duluth, MN)**	**Thistle Homes (Boulder, CO)**	**Wildwood Park (Atlanta, GA)**
Formula setting the resale price and maximum increase in equity that a seller can realize when transferring an ownership interest	Four methods: Real Estate Index; HUD Med. Inc.; Average of above; 1.125%/ quarter	Condos: 25% of appreciation; Single family homes: 25% of appreciation times the percentage of the property's total value initially purchased by the homeowner	Three methods: CPI index; median income buyer pays 33% of income; AMI index	Increases by prime rate	30% of market appreciation	25% of appreciation times the percentage of the property's total value initially purchased by the homeowner	Preset dollar Appreciation amount per year; appreciation increases periodically
Down payment and closing costs	n/av	$2,749	$40,533	$18,363	$1,075	$6,080	$1,249
Median % down	5.0%	2.6%	13.1%	100.0%	1.3%	4.8%	24.9%
Real change in annual min. income required at resale	4.0%	1.1%	0.3%	-1.6%	1.9%	0.5%	-0.7%
Appreciation realized by seller	$42,524	$6,578	$17,321	$4,171	$4,297	$8,107	$2,015
Median length of tenure (in years)	3.3	5.2	4.2	4.0	3.3	3.4	6.6
Program Internal Rate of Return	59.6%	30.8%	11.3%	6.5%	39.0%	22.1%	14.1%

* ARCH did not provide information on mortgages. Therefore, reported IRR and changes to the affordability of ARCH units are based on estimates where a buyer places a 5 per cent down payment and finances the remaining purchase with a 30-year, fixed-rate mortgage with a 6.0 per cent interest rate.

Source: Temkin, Theodos & Price 2010, p.25

When comparing housing costs to changes in minimum income levels for all case studies, Temkin, Theodos and Price (2010) found only minor losses in affordability. It was found that the minimum income required to enable purchase generally increased in the order of less than 2 per cent per annum, with the exception of a deed restriction scheme in Washington, which required an annual income increase of 4 per cent. In this context, the degree of affordability retention depended on real changes in incomes. The report found the programs provided a range of returns on homeowner investment and that all were involved in unique balancing acts between equity gain and affordability retention, geared to local market conditions and target households. The report found that resident mobility was not adversely affected by six of the seven programs; frustratingly, there was no data available on mobility for buyers in the scheme.

2.5 Issues and factors in implementation in the United States

As a new and unfamiliar model of tenure, CLTs faced particular issues in their establishment in the USA which may have resonance for implementation in an Australian context.

2.5.1 Legal issues

The community land trust model presented a new and unfamiliar separation of land from improvements in the United States, but this did not require legal intervention or legislative changes to legalise the model. The creation of a Federal definition of CLTs (see Appendix 1) and the insertion of this into the National Housing Act in 1993 was a strategic manoeuvre to engender familiarity and consistency in the sector and amongst lenders, regulators and other stakeholders. The development of model documents such as ground leases has greatly enabled the sector, allowing new CLTs to access and amend existing templates rather than seek expert legal advice to develop these from scratch.

The ground lease is the core legal mechanism holding the CLT model together and enacting the intentions and objectives of each CLT. Ground leases impose conditions and restrictions regarding occupancy and use, price, buyer eligibility and mortgage financing (Abromowitz & White 2010). Some CLTs use deed restrictions via covenants attached to deeds of homes, which do not rely on the separation of land from improvements. Both deed restrictions and ground leases can include a pre-emptive option that allows a CLT to buy the home at a formula-determined price, or assign the option to another eligible buyer at the time of sale. The mechanisms of ground leases, deed restrictions and dual mortgages are compared in Appendix 3.

Deed restrictions may be seen as simpler and easier than ground leases as they do not rely on title separation; Abromowitz and White (2010) highlight issues regarding the use of deed restrictions for affordability, especially in perpetuity. Perceived benefits of using deed restrictions include:

- Familiarity.
- Avoidance of possible taxation issues arising from separate tax assessments of land and improvements.
- Buyer acceptance, especially where buyers want to feel they own land.
- Can be used with apartments on unit-by unit basis.
- No leaseholder mortgages, so greater acceptance amongst lenders (Abromowitz & White 2010).

However, deed restrictions in the United States have generally been designed to be short- to medium-term—generally between five to 20 years—and enforcement beyond those terms can be problematic. Some states expressly limit the duration of covenants 'and in almost every state, 'perpetual' deed restrictions are considered invalid as an unacceptable 'constraint on alienation' or violation of the 'rule against perpetuities' (Abromowitz & White 2010, p.331). In response, several states have enacted laws expressly permitting perpetual deed restrictions to preserve the affordability of publicly-subsidised owner-occupied housing such as that provided by CLTs. Initially, deed restrictions were perceived to be self-enforcing; however, the failure of self enforcement has led to the creation of dedicated agencies to monitor and enforce deed restrictions.

In comparison, ground leases can require more effort and be less familiar and/or acceptable to buyers. However, Abromowitz and White (2010) state the ground lease mechanism may be more effective at maintaining restrictions, better support vulnerable homeowners, and preserve public investment. Ground leases may be more enforceable, as the lessee's ownership is explicitly tied to compliance with the terms of the ground lease. Questions have been raised as to whether the 99-year ground lease violates the rule against perpetuities; however, it is generally felt that based on similar challenges in other tenure forms, such a challenge would not be legally upheld (Abromowitz & White 2010; Institute for Community Economics 2002). Further, the Model Ground Lease contains a backup provision which states that the parties agree to set terms of applicability. Abromowitz and White (2010, p.332) state that 'the possibility that the sale could be carried out in violation of the lease's resale restrictions is extremely limited.' Perceived benefits of using ground leases include:

- As an agreement between two parties, leases provide strong legal basis for maintenance of restrictions.
- Through collection of monthly lease fees, CLTs can monitor financial and/or physical condition of stock.
- As lessors, CLTs can monitor proposed financing to lessees.
- As lessors, CLTs may be able to re-acquire foreclosed homes, and will retain community interest in land.
- Ability to modify terms of ground lease (National CLT Network 2011a, Abromowitz & White 2010).

This last point refers to perhaps the most striking difference between deed restrictions and ground leases, which is the assertion and maintenance of the community's right in the land through ground leases, which is not as clearly enabled via deed restrictions. Abromowitz and White (2010, p.334) state that through the ground lease 'the community's interests are affirmatively stated and are balanced with the stated interests of the individual.'

2.5.2 Financial issues

CLTs invariably need start-up costs to cover operational costs and construction and many receive land donations. Most CLTs can cover the costs of stewardship once they are leasing to 200 units of housing or more. Key financial issues faced by CLTs relate to real estate taxes and funding. The first issue refers to tax assessors, in some jurisdictions, still setting real estate tax levels on the basis of homeowners having access to the underlying land value and appreciating house value, which they do not. This places an unreasonably high real estate tax on the properties. The issue of funding relates to both operating costs and expansion.

Homeowner mortgages are provided on the improvements owned by the homeowner and the homeowner's leasehold interest in the land, but do not include a lien on the CLT's interest in the land. As such, even should the home fall into default, the mortgagee has no claim on the land. Many banks have been reluctant to loan under these conditions; those that have, have largely been compelled to do so via obligations under the *Community Reinvestment Act* which encourages banks to invest in programs assisting low- to moderate-income households in their service areas. As a result of this general sector reluctance, the CLT sector has engaged heavily with secondary lenders such as Fannie Mae. This has required the creation of a uniform lease rider that Fannie Mae has found acceptable. This rider applies for the duration of the Fannie Mae mortgage, eliminating any provisions that Fannie Mae finds unacceptable while ensuring the aims of such provisions are still met through amended provisions (National Community Land Trust Network 2011b). The establishment of CLTs in Australia will require the awareness and support of lenders, whether primary or secondary. Agencies such as Community Banks, Credit Unions and Indigenous Business Australia may represent appropriate points of entry[4].

Lending practices to support low-income home ownership must be appropriate. In the US, CLTs screen the mortgages their buyers access, such that predatory lending practices are prevented. Generally, CLT homebuyers only access long-term, fixed-rate mortgages, so that all parties are aware of the ongoing costs likely to be incurred. This stability has been pivotal in securing and backstopping low-income home ownership in CLTs and was a core factor in the stability of the sector during the recent foreclosure crisis in the US.

In dealing with any lender, certain core concerns need to be addressed. Lenders generally want clarity and security regarding lease validity, duration and termination, as well as assurance of the processes following foreclosure. CLT concerns in homeowner lending relate primarily to the prevention of predatory lending practices and the retention of restrictions regarding occupancy, resale and use. CLTs have had to be mindful that these restrictions do not limit the rights of homeowners or lenders to the extent that financing cannot be secured. In contrast to this lender reluctance, Davis (2010c) states that several lenders have recognised the role of CLTs in stewarding home ownership—that is, preparing and supporting their homeowners—as a form of credit enhancement, with some lenders subsidising the costs of stewardship or offering reduced closing costs or discounted mortgage rates to shared equity home ownership programs with stewardship processes in place.

2.5.3 Policy issues

Much federal, state and local policy has responded to the emergence of CLTs in the US. Davis and Jacobus (2008) document policy implications and outcomes at the local level, with increasing familiarity with CLTs leading to these organisations becoming targeted recipients of inclusionary zoning, density bonuses and other local policy requirements for affordable housing provision. Davis and Jacobus (2008) provide an overview of recent affordable housing policy shifts and their implications for city-CLT partnerships in the US, see Table 3.

Over recent decades, federal US housing policy has increasingly promoted low-income home ownership. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 created performance standards for the Government Sponsored Enterprises Fannie Mae and Freddie Mac to broaden the households their home ownership programs were available to (Shlay 2006). The Department of

[4] For example, Community CPS, a large Australian credit union, provides finance for the ACT Land Rent scheme which operates under some similar principles to CLTs.

Housing and Urban Development established targets for loans made to low- and moderate-income households in urban areas.

Table 3: Affordable housing policy trends and City-CLT partnerships in the US

Federal Housing Policy	***State and Local Housing Policy***	***City–CLT Partnerships***
Reduction in federal funding for affordable housing and community development.	Creation of state and local housing trust funds, capitalized through non-federal funding sources.	Expanded number of CLTs working in partnership with local government instead of in opposition to municipal policies and plans.
Devolution of authority and responsibility for housing and community development programs from the federal government to state and local governments.	Expanded use of regulatory mandates such as inclusionary zoning and growth management controls that require developers to produce affordable housing.	Expanded number of cities playing a lead role in starting CLTs instead of waiting for new CLTs to emerge from the community.
Expanded use of tax credits instead of grants in subsidizing production of affordable housing.	Expanded use of regulatory incentives such as streamlining, density bonuses, and fee waivers that reward developers for producing affordable housing.	Expanded number of cities playing a more dominant role in governing CLTs.
Expansion of capacity funding and technical assistance for Community Housing Development Organizations (including CLTs).	Wider commitment to preserving the affordability of owner-occupied housing created through the investment of public funds or the exercise of public powers.	Expanded number of CLTs focusing on stewardship, acting on a city's behalf to monitor and enforce long-term controls over affordability.

Source: Davis & Jacobus 2008, p.34

Research into low-income home ownership patterns in the relatively supportive US policy context suggest that the limits of such plans may already have been reached (Shlay 2006). Writing in 2006, Shlay noted that substantial barriers to renters entering home ownership still remained—most notably substantial deposits and closing costs. In addition, there were also supply-side constraints in effect, with very little affordable housing stock being built.

In the United States, the policy focus on low-income home ownership was underpinned by assumptions that the perceived social and economic benefits of home ownership witnessed among higher-income households would be similarly experienced by lower-income households. Shlay (2006) posits that this is not necessarily the case: economically, owning may not in fact be a better option than renting for lower-income households, while many of the social correlates of home ownership have been found to be more related to the social capacity and life stage of the household, than to any inherent benefit of owning. This includes ongoing impacts of disparities in education and employment due to histories of racism, privilege and discrimination. Shlay cites Blum and Kingston (1984, p.176) who 'see home ownership as part of a cluster of reinforcing statuses and outlooks that both sustains and creates social attachment.' Shlay also highlights that the positive impacts of home ownership on children were more significant in lower-income households, but that the reasons for this had not yet been identified by researchers.

Regarding economic benefits, the location, timing and duration of home purchases were found to be crucial factors in determining the economic gains to low-income home owners (Shlay 2006). Moreover, economic gains in home ownership compared to renting in America were found to be greater for White households than for Black households: hence, 'place, race and neighbourhood are vital parts of the equation when assessing economic benefits to low-income home ownership' (Shlay 2006, p.511). Goetzman and Spiegel (2002) assert that encouraging low-income home ownership would worsen inequality due to the poor rate of returns on property compared to other investment strategies.

Success in low-income home ownership is based on location and financial intermediaries. Given that many low-income households are buying in areas with poor-quality housing, home ownership policies can push vulnerable households into even more vulnerable situations with costly home repairs, lower rates of wealth appreciation and lower neighbourhood amenity (Shlay 2006). The US research also suggests that 'it may not be good policy to encourage low-income families to invest in communities with the least resources' (Shlay 2006, p.523); however, it must be noted that research was referring to inner-city areas with high crime rates and poor schools, and took no account of whether residents would prefer to live and invest in these areas due to community or other ties and hopefully improve the prospects for the neighbourhood.

In the US, low-income home ownership has been found to be beset with issues relating to: financial constraints on households; the tendency of these households to revert to renting; risks associated with overreliance on housing as an investment; negative externalities due to location; and, predatory lending practices. Shlay (2006) states that to be effective, low-income home ownership policy must address this complexity, as 'solely facilitating low-income families' access to home ownership without altering other aspects of the housing market is unlikely to provide many of the economic, political and social benefits suggested by proponents of low-income home ownership … Delivering on low-income home ownership means delivering on the full set of life-sustaining housing bundle characteristics.' (Shlay 2006, pp.524–5). Building on this, Shlay posits three policy directions focused on housing:

1. Improve access to quality home ownership opportunities through increased financial support and place-based strategies.
2. Increase support for rental housing.
3. Support alternative tenure forms.

2.5.4 Governance issues

Historically, the majority of CLTs have emerged as grassroots organisations, with variations on the classic tri-partite Board structure. More recent developments of CLTs by municipalities using public assets and/or funds, have involved rearrangements in the establishment and governance of these organisations. In these, the tri-partite structure may be retained, but with Directors appointed to each part of the Board, rather than elected by the membership. Some municipalities which have established CLTs have reserved seats for their own staff. While these may represent a shift away from the 'purely' grassroots origins of the Board structure, most still represent a balance of interests and aim to incorporate a substantial voice from leaseholders. First Homes CLT in Rochester, Minnesota is an exception to this, with no leaseholders on its Board (Packnett 2005). Similarly to Dudley Neighbors, Inc. in Boston, Massachusetts (see 2.7), First Homes operates within the parameters of its parent organisation, the Mayo Clinic Foundation, the Board of which does include community members, but not specifically leaseholders.

The somewhat cumbersome nature of many CLT Board structures may prompt questions regarding the efficiency of decision-making processes. Curtin and Bocarsly (2008) claim the membership basis can slow down decision making, but anecdotal evidence from the sector suggests otherwise. For example, with its voting membership of 6500 and Board of 34, the Dudley Street Neighborhood Initiative (DSNI) has overseen the completion of hundreds of builds in line with community-based development guidelines. DSNI's CLT, Dudley Neighbors, Inc., holds power of veto over any development on land held by the City of Boston within the CLT's core area, and has frequently had hundreds of community members in attendance at meetings to oversee development applications. Practitioners claim better outcomes due to the ongoing articulation and negotiation of development criteria, which helps alleviate community resistance and generates more holistic planning outcomes. It remains to be seen just how accommodating CLTs initiated by municipalities or other entities are to community intentions and visions. According to the Community Land Trust Handbook:

> The open and democratic structure of the CLT is...a centrally important feature of the model. A community land trust cannot succeed as something created merely for a community. It must represent an effort of and by the community. (White 1982, p.35)

Evidence from the US would suggest that this is perhaps a key concern in developing any CLT Board structure, irrespective of its eventual form. It would also suggest that professionalism and prudence are vital when an organisation is charged with stewardship of community and public assets.

2.6 Case study: Champlain Housing Trust[5]

The Champlain Housing Trust (CHT) was formed by the merger between the Burlington Community Land Trust and Lake Champlain Housing Development Corporation in 2006. The Trust has over 4000 members and over 2000 households. These consist of 1500 rental units, 115 cooperative homes and 430 owner-occupied homes (Champlain Housing Trust 2008; 2010). The Trust has a portfolio of new-built and refitted homes, including rental apartments, cooperatively owned apartments (in several limited equity cooperatives), limited equity condominiums, cohousing, seniors living and free-standing single family homes. Many of CHT's properties are multi-use, such as combined artists' live/work apartments, rental units above retail spaces in the centre of Burlington and a senior living complex housing the local health clinic and an Indigenous after school care centre.

Due to its scale and local governmental support, CHT has been able to purchase open space to convert to parks and affect entire streetscape planning, with affordable community-based urban renewal outcomes. Funding for start-up from the City of Burlington was crucial. Now that CHT is at scale, it can cover its ongoing costs of overseeing and reselling its portfolio of resale-restricted owner-occupied housing out of its own revenues, but it still requires external operating and project funding to support many of its other activities. Currently CHT is developing its Legacy Fund from philanthropic sources: a permanent fund of $US 3 000 000 to support purchases and construction (Champlain Housing Trust 2008).

[5] Information for this section was complemented by personal communication with John Emmeus Davis, partner, Burlington Associates in Community Development LLC, 13–14 April 2008.

Figure 3: Thelma Maple Cooperative Housing on CHT land

Photo: Crabtree

Figure 4: Freestanding home on CHT land

Photo: Crabtree

The Champlain Housing Trust (formerly the Burlington Community Land Trust) was the subject of a review of the maintenance of its housing affordability over resale (Davis & Stokes 2009). Over 1984–2008, CHT developed 424 moderately-priced single family houses and condominiums and 205 of these were resold between 1988 and 2008 (Davis & Stokes 2009). That study contains several key findings. First, the affordability of the units increased over the study period. At the time of initial sale, the average CHT home was affordable to households on 56.6 per cent of Area Median

Income (AMI); at resale, it was affordable to those on 53.4 per cent of AMI. Second, substantial community wealth was retained; public subsidies of US $2 172 207 put into the homes enabled CHT to house 357 low- to moderate-income households. Third, neighbourhood stability was enhanced, with 96.7 per cent of CHT properties retaining their affordability and occupancy protections. Nine properties have gone to foreclosure but remain under CHT's care; no land or homes have been lost from the portfolio due to foreclosure. Fourth, home ownership was expanded, with all CHT residents earning less than AMI, with the average on 69.4 per cent AMI. Fifth, individual wealth was created. When selling after an average of 5.5 years, the average CHT homeowner received their initial deposit, their repaid mortgage amount, plus US $12 000. Lastly, CHT home ownership fostered homeowner mobility, with households who left CHT doing so 'for similar reasons and with similar success as homeowners buying and selling on the open market' (Davis & Stokes 2009, p.2). In 2008 the Champlain Housing Trust won the United Nations World Habitat Award for the Global North.

2.7 Case study: Dudley Street Neighbors Incorporated[6]

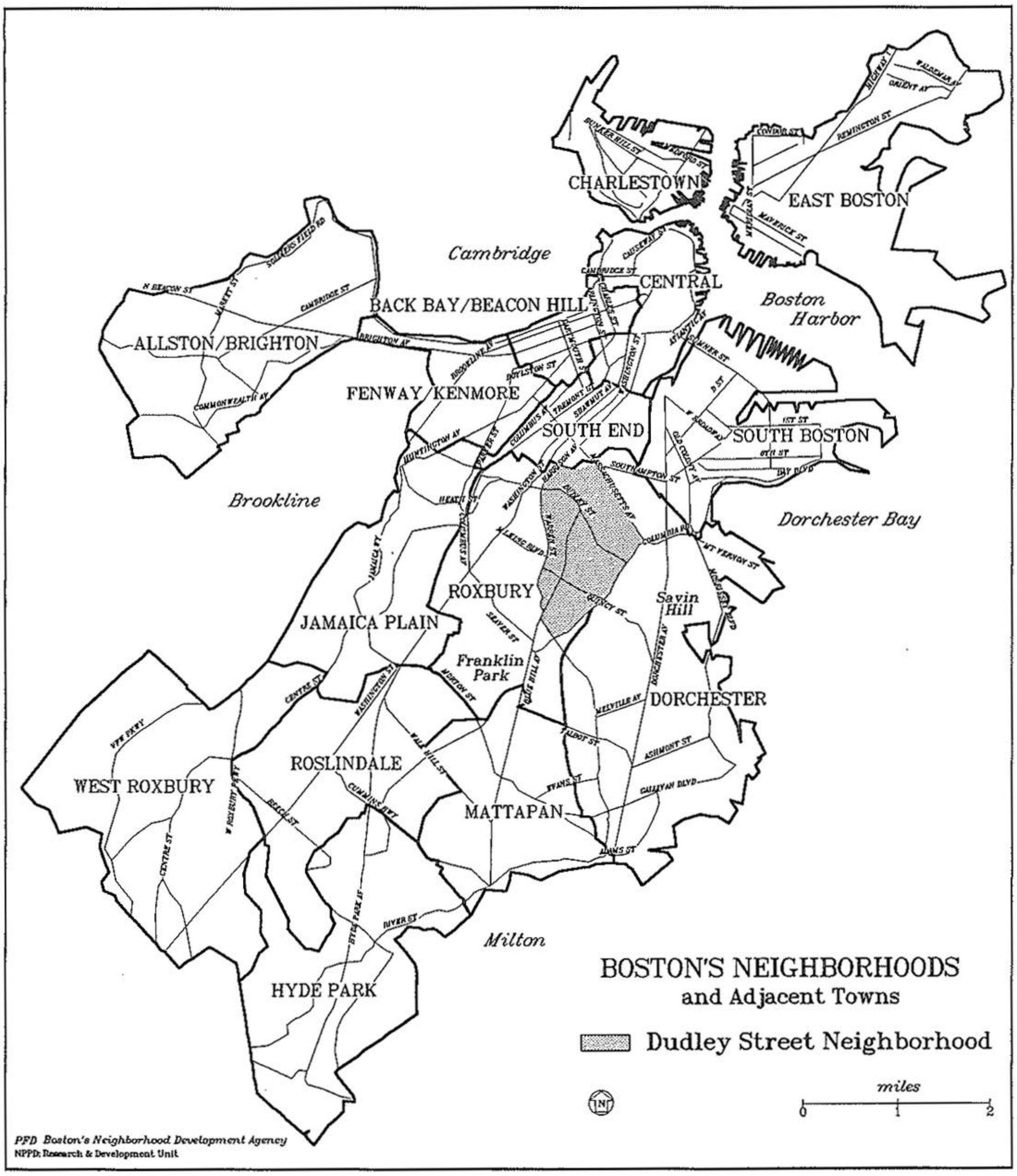
The history of Dudley Street is long and colourful and the subject of at least one book and one documentary[7]. The Dudley Street Neighborhood Initiative (DSNI) is a community-based planning and organising entity which created a community land trust as a subsidiary, Dudley Neighbors, Inc. (DNI), to implement the community's vision for the blighted and marginalised Dudley/Roxbury area of Boston. DNI was formed in 1988 when the City of Boston utilised the power of eminent domain to hand over title to vacant and disused properties in a 12ha area of Roxbury (the core area). DNI also has the power of veto over any development application on City land in a 12ha site surrounding the core area (see Figure 5) and was subject to a high level of absentee landlordism, illegal dumping, property destruction and looming gentrification.

Since its inception, DNI has overseen the development of 225 perpetually affordable housing units and DSNI has overseen more than 1300 development applications in the area, often with several hundred community members at development application meetings. The City has adopted DNI's redevelopment plan as its planning strategy for Roxbury. The 34-seat DSNI Board includes 16 residents from each of the four local major ethnic groups (African-American, Latino, Cape Verdean and White), two additional Board-appointed residents, three youth, seven non-profit agencies, two churches, two businesses and two community development corporations (DSNI 2008). As a subsidiary of DSNI, DNI is driven by and exists to fulfil the desires of DSNI; as such, DNI does not have a three part board structure as it is already shaped by DSNI's multi-stakeholder Board. Rather, DNI has 11 Board members, of which eight are voting positions. The three non-voting positions are appointed by the City to ensure the power of eminent domain is not misused; these are an appointee of each of the City Councilor from the 7th District, the State Senator of the 2nd Suffolk District and the State Representative of the 5th Suffolk House District. Of the eight voting positions, six are from DSNI, one represents the Roxbury Neighborhood Council and one the Mayor's office. Currently three of these DNI Board members are CLT leaseholders.

[6] Unless stated otherwise, information for this section is sourced from Jason Webb, Director of Operations, Dudley Street Neighbors, personal communication, 17 April 2008.

[7] Medoff and Sklar (1994) and Lipman and Mahan (1996), respectively.

Figure 5: Dudley Street Neighbourhood Initiative location



Source: Medoff & Sklar 1994, preface

DNI has commissioned for-profit developers to build their affordable housing according to criteria established by residents regarding room size and housing types, materials and rate of infill. DNI houses households on up to 120 per cent of AMI and places a restricted value on homes, with the resident owning the entire value of any improvements made. In addition, DNI have successfully secured lower land tax rates of roughly US $400 p.a. per property instead of the regular US $1200 p.a. The Trust has recently expanded into affordable rentals through purchase and the construction of Dudley Village.

Dudley Village combines 50 permanently affordable rental apartments with ground floor commercial on the main street of Roxbury (Figure 6). The development application was overseen by 350 community members and the development process supervised by a sustainable development committee covering land use, civic building, density and building material and design. This relatively dense development was driven by local residents and social service agencies which recognised that density gain was necessary for social services' viability. Other DNI projects have included parks, community gardens and a 900 square metres commercial greenhouse on 2000 square metres of land in partnership with the Food Project, to address local food security and youth employment concerns.

Figure 6: Dudley Village—50 rentals plus retail on DNI land

Photo: Crabtree

An emerging challenge for DNI is the increasing pressure to develop medium-density infill housing as land values rise, which many long-term residents are unwilling to accept due to the particular history of the area. Many local residents remember the firebombing of houses for insurance gain or speculative reward during the 1980s and are reluctant to see infill housing return, as often entire rows of houses were lost to arson.

2.8 Case study: Northern California Land Trust

Northern California Land Trust (NCLT) holds title to land under roughly 100 resale-restricted properties in the Berkeley area of San Francisco, California and combines rental housing, cooperatively owned housing, and community properties. The organisation has six staff and a Board of five, with no Directors drawn from representatives of the public at large.

In 2006, NCLT embarked on a major re-development project, aiming to convert a former noodle factory into 11 live-work spaces for artists, two rehearsal studios and public events space to a total of roughly 230 square metres, plus a cafe. Total project costs were estimated at US $5.3 million. The Trust formed a shelf company to undertake the development, with the Trust acting as guarantor on financing provided to the development company. The development was intended to be completed by the first half of 2008. However, the global economic downturn drove the project's builder bankrupt; further, demand for live-work spaces was not as high as expected, with the result that the development company defaulted on its loan and the Trust itself became insolvent. At the time of writing, the Trust was looking into ways to put itself under the legal shield of bankruptcy or receivership in order to cancel the debt without losing the Trust's housing stock. It is intended that future NCLT operations will focus on stewardship rather than development. Davis (2009, pers. comm.) has stated that nearly all of the few CLTs that have failed over the past decades have failed for similar reasons; namely, over-extension into unfamiliar and/or high-risk development activities. In the case of NCLT, it is possible that a larger or more balanced Board may have prevented the exposure of the Trust's assets to the vagaries and investment risks of large-scale development.

Figure 7: Mariposa Grove cohousing on Northern California Land Trust land

Photo: Crabtree

3 COMMUNITY LAND TRUSTS IN THE UNITED KINGDOM

The recent development of the UK CLT sector was initially driven by the efforts of Community Finance Solutions at the University of Salford in Southampton, UK and more recently, by the continuing work of Community Finance Solutions and the emergence of a CLT campaign from within London CITIZENS, a broad alliance of over 150 member organisations across London (Aird 2010; Smith 2010). The work at Community Finance Solutions was initially undertaken via a National Demonstration Program funded by the Housing Corporation (the non-departmental public body responsible for funding new affordable housing and regulating housing associations), the Higher Education Funding Council for England and the Carnegie UK Trust (an independent charity focused on social wellbeing). The National Demonstration Program consisted of rural and urban development streams, discussed in 3.1 and 3.2, respectively.

Figure 8: Community land trusts in the UK in 2008

Source: Aird 2009, p.8

At the time that Community Finance Solutions started researching and supporting CLTs, there were very few recognised CLTs in the country and very little political awareness; the aim was to provide emerging CLTs with practical support and tools to become established (Aird 2010). By 2009, that support had led to the development of around 30 CLTs, with over 150 homes built or funded. With the sector growing, a national definition of CLTs was passed into the national Housing and Regeneration Act in 2008 (see Appendix 4); similarly to the USA, this was to foster familiarity with and consistency in the model. In 2010, a national association of CLTs was organised in the UK.

The position of CLTs in UK public policy is interesting. Aird (2010, p.453) states that the strategic objectives for housing provision are laid out in Planning Policy Statement 3, which defines affordable housing in terms of two key requirements:

1. An evidence base where affordability is 'determined with regard to local incomes and local house prices'.
2. Arrangements for performance where housing must remain at an affordable price for future eligible households (or) for the subsidy to be recycled for alternative affordable housing.

Aird (2010) goes on to state that many local public authorities believe that programs aimed at getting first-home buyers into the market have failed to meet this two-fold definition and that CLTs would meet the definition, as they not only make housing affordable up front, but also keep it affordable. This echoes the basis for public sector interest in the CLT model in the US. In the UK, there is threefold interest in CLTs: for regenerating or preserving rural areas; for regenerating urban public housing and providing affordable housing in cities; and, for renewal and stewardship (Aird 2010; Smith 2010). According to Aird (2009, p.6), a 2004 review of the activities of the Scottish Land Fund, which had been established to help communities acquire, develop and manage land, found:

→ It had promoted local interaction and networks.

→ People had increased confidence and had developed new skills.

→ It had helped to reverse population decline.

→ Projects had helped to create jobs and develop new community facilities.

→ Most projects were generating their own income.

→ There had been improvements to the natural environment particularly woodlands.

→ Many projects incorporated renewable energy generation elements.

In light of findings such as those, the impacts of the global financial crisis and the UK Conservatives' policies of the Big Society, there is much interest in expanding models of community ownership in the UK, building on the country's history with mutual societies and cooperatives.

3.1 Case study: the first 150 homes[8]

In 2009, Community Finance Solutions carried out research into the first 150 homes built on rural CLT lands in the wake of the support and resources from Community Finance Solutions (Aird 2009). The report drew on interviews and surveys with CLT practitioners. In light of the CLT focus on building community, Aird (2009, p.6) stated that:

> Although we aim to demonstrate the success of CLTs through the number of homes built or in the pipeline, the core strength of CLTs lie not in how many homes they can deliver, but in how these homes are built and managed and lived in, in order to build a sense of community.

The CLTs documented in the report were small-scale non-urban CLTs, focusing on community access to or preservation of affordable housing in rural areas. Frequently

[8] This section draws on Aird (2009).

these built on the capacity of existing community development organisations such as almshouse trusts or development trusts and operated within these organisations, while some were established as separate CLTs (Aird 2009, 2010). Aird (2009) refers to the emergence of a new form of CLT—the umbrella CLT—which exists to serve a large area and to assist the formation of CLTs within that area, to liaise and lobby at a higher level than smaller organisations may be able to, and to develop specialist products such as appropriate mortgages or revolving loan funds. This form has also recently emerged in the southern states of the US, to provide support to existing and emerging CLTs across the region (Davis 2010, pers. comm.). The Aird (2009) report was keen to point out that it is imperative that umbrella bodies not raise expectations regarding outcomes, nor divert essential resources away from getting CLTs on the ground.

A core finding was the need to establish ongoing support to continue to develop the sector; consequently a CLT Fund was set up using funds from Tudor Trust and Esmée Fairbairn Foundation and managed by the social investment initiative Venturesome (Aird 2009). Further support was provided to the emerging sector via online open source legal, financial and other resources, as well as the establishment of an online forum and annual conferences.

It was found that local authorities had been able to assist CLTs in a number of ways including planning gains and grants, but could also be suspicious of the unfamiliar CLT model, frequently perceiving it as risky. Aird (2009) argues that CLTs can help local authorities meet and exceed affordable housing objectives, however, through their commitment to perpetuity and stewardship. Similarly, partnering with existing affordable rental housing providers—the housing associations—was found to be a mixed blessing, with some able to provide skills and resources, and others lacking the flexibility and skills to work with the community (Aird 2009). Most, however, stated that existing associations came to see the benefits of partnering with CLTs. As in the US, the emerging rural CLT sector in the UK referred to a high level of support drawn from philanthropic organisations. Explorations are being made into making public funding available to CLTs; similarly to the sector in the US, there is variation in the CLTs' ability and desire to enter into such arrangements. Funding was a core issue for all CLTs, whether this came from private and philanthropic sources, low-interest loans, or public subsidisation.

Initially the rural CLTs intended to provide home ownership. However, as most of the rural CLTS are in picturesque areas experiencing housing stress due to the advent of holiday homes, even shared equity home ownership remained beyond the wages of local households. In such instances, CLTs shifted their focus to providing rentals. All retained their broader focus on community stewardship, green spaces, community facilities and local employment issues. One rural CLT, High Bickington Community Property Trust, is building a rented housing, open market housing and shared-equity housing, as well as a multi-use games area, a new school; garden allotments, a community hall, wildlife habitat, cycle paths, community woodland, a community health centre, live-work space and workshops and a woodchip boiler to supply energy. Other rural CLTs are developing infrastructure including pubs, renewable energy provision, garden allotments and work spaces; this echoes the activity of many US CLTs in developing and stewarding multiple uses and forms.

The rural CLTs in the UK have wildly varying membership bases. Some have started as small groups of individuals aiming to establish projects and then garner broader community support and membership, while others have started from broad community bases, including CLTs with share issue options modelled more along the lines of community land banking.

A key finding from the rural CLT study was that there was substantial community interest in the model and great potential for establishment given the right support. As such, the intention for one CLT to be started on site through the support to rural CLTs was exceeded, with three started on site, with 30 homes built and 139 pending by the study's end.

According to the report, the core strengths of the emerging rural CLT sector are that it reflects and channels community objectives and abilities, targets perpetuity and builds community capacity and amenity. Core weaknesses were finding or developing appropriate funding, a reliance on volunteers and the effort required to overcome hurdles. The opportunities for the sector included the capacity to provide an intermediate housing product, targeting households falling in the cracks between public or affordable rentals, publicly subsidised home ownership programs such as Homebuy[9] and the open market. CLTs were also seen as a potential vehicle for the transfer and stewardship of public assets and for the purposes of affordable housing and community empowerment. The lack of a single voice for the sector, or agreement on what a CLT is or what it may need, were seen as potential issues for the sector, as was a lack of familiarity, comfort or understanding among funding and regulatory bodies, especially with regard to community control and empowerment.

3.2 Urban placemaking[10]

A review of efforts for urban CLTs in the UK sat alongside the rural CLR report, discussed above and documented existing and emerging CLTs in urban areas. The report stated a core issue upfront:

> Policy-makers understandably seek out model solutions that can be easily understood and applied everywhere. The name is important as 'community-led', 'land' and 'trust' all have meaning and significance. Crucially, they indicate that councils and developers cannot just reach for a CLT off the shelf, and say 'We'll have one of those'; CLTs are the outcome of a process in which communities will take a leading role, about the use of land, in a climate of trust (Community Finance Solutions 2008, pp.1–2).

In a similar vein to the rural report, the urban report found CLTs play a core role in more than housing; they can be pivotal 'placeshapers' (Community Finance Solutions 2008, p.2), combining multiple social objectives and outcomes through community engagement. The report's key findings all related to recognising and enhancing the unique position of CLTs to combine perpetual affordability and community development outcomes, and to the need for public and other agencies to work to enable CLTs. Echoing the rural report, there was also a reference to:

> A need for greater clarity and better advice about the use of public assets and their value as a positive and pro-active tool for investment by public bodies in the wellbeing of communities; removing the negative and misleading connotations of public interest 'loss' and 'undervalue' … What has become apparent is that CLTs are not just another model; indeed their very diversity defies easy categorisation. CLTs are an important way of thinking about how land and property assets, particularly those already in a public interest ownership, can be used more effectively for community benefit. (Community Finance Solutions 2008, p.2)

[9] Homebuy is a dual mortgage scheme managed by housing associations, in which the home owner buys 25–75 per cent of the property price as shares and pays a subsidised rent on the remaining value.

[10] This section draws on Community Finance Solutions (2008).

This is a line of argument largely absent from the US sector, perhaps reflecting the political contestation over the use or retention of public assets in that country. It is an argument of relevance to the Australian sector and landscape, however. The urban report called for government departments to include advice to staff on the capacity of CLTs to meet multiple objectives, namely:

- Placeshaping and spatial planning.
- Neighbourhood governance.
- The provision of permanently affordable housing.
- The promotion of community cohesion.
- Adapting behaviours to climate change at community level (Community Finance Solutions 2008, p.4).

The urban report provided an exhaustive list of recommendations to sector stakeholders, including: national and local government, the Homes and Communities Agency; the Royal Institution of Chartered Surveyors; the Royal Town Planning Institute; the housing associations and their Federation; OFTENANT[11]; Charitable Trusts, Foundations and private finance providers; and voluntary and community sector organisations and national agencies. The report argued the relevance of CLTs to the UK government's growing focus on neighbourhoods and communities in its policies regarding urban renewal, sustainable communities, placeshaping and economic development. Particularly, the report positioned CLTs as a prudent mechanism for addressing these concerns in the context of genuinely involving communities in spatial planning. Prior to the recent election, local government agencies were compelled by a Duty to Involve, which mandated community participation strategies. However, the newly-elected conservative coalition 'is rather talking far more concertedly about what citizens can do for themselves as part of the Big Society as opposed to what governments need to do to listen to citizens' (Involve 2011).

[11] The Office for Tenants and Social Landlords – the regulatory body for the social housing sector in the UK.

4 ISSUES FOR IMPLEMENTATION

Review of the CLT model in the USA and UK suggests several core issues that will need to be addressed to advance the model as a housing option in Australia. These are discussed below.

4.1 General operating requirements

4.1.1 Legal

Basic work needs to be done to ascertain the legal parameters under which a CLT-type model would operate in Australian jurisdictions. The existence of local land rent schemes suggests that it is possible to separate land from housing in legal title. Similarly to the US and UK, the core requirements are likely to be the generation of model documents, the creation of a national CLT definition for the purposes of affordable housing and community benefit, and raising familiarity amongst legal practitioners.

4.1.2 Financial

Work is needed to model the activities, business plans and indicative performance of various CLT-type models across a range of contexts. Information is also needed on whether lending in a CLT context is allowable for major banks, and whether these, community banks or credit unions are willing and able to engage and create an appropriate mortgage product. Overseas experience and research suggest that core characteristics of the mortgage financing arrangement will need to include a long-term fixed-rate instrument in which the lease is accepted as security, and that CLTs be informed of arrears and default.

4.1.3 Governance

In both the US and UK, CLTs are more than a housing finance product—they are organisations which are based in strong community participation and development, with outcomes in community building as well as housing affordability as a result. The US and UK sectors have found this requires that effort be made to engage and retain members and to train all board members—whether residents, community or business—to ensure effective and collaborative governance. The involvement of a strong membership base and capable Board Directors for CLTs is a core issue for implementation in both the mainstream society and in Indigenous communities.

4.1.4 Scale, context and viability

The experience of CLTs overseas reveals that scale and context are core factors differentiating CLT activities and viability. Thus these will require consideration in an Australian context. Far from being a uniform model of home ownership, CLTs are highly flexible and responsive institutions, tailoring their programs and activities in response to local need, capacity and objectives. Many CLTs have found there are local income levels below which home ownership is simply not viable, and so focus on providing rentals alone, or mixing rentals with home ownership and/or cooperative housing if they wish to serve a range of incomes or offer tenure choice to their residents when their circumstances allow. In most instances CLTs attempt to address whatever gap and need exists in their local housing market and facilitate mobility across a range on tenures in the market.

Most CLTs have struggled to retain financial autonomy if they steward less than 200 housing units. Modelling will be required to identify a comparable figure in Australia and to explore the parameters under which scale can be achieved, given many community housing organisations in Australia hold fairly small portfolios. Similarly, the core activities of CLTs would need to be considered—while some CLTs in the US do undertake housing development and construction, most prefer to partner with another organisation to undertake development and construction, whether for- or non-profit. The US sector reports that overextension into development activities has been a core factor behind the few collapses of CLTs that have occurred—an outcome to be avoided.

4.2 Unfamiliarity and market issues

The CLT model, although operating extensively in the USA and in an expansion phase in the UK, is less well known in Australia. However, in housing policy circles there has been growing interest in CLTs, and some media interest.

4.2.1 Understandings of CLTs in Australia

Since 2007, activity around CLTs has increased considerably. For example, Shelter NSW produced a paper introducing the CLT concept (Johnson 2010) and a chapter by Crabtree (2010) appeared in the inaugural CLT Reader. In addition, information about CLTs has appeared on websites; for example, Prosper Australia (Fitzgerald 2008), Live Local (p.2010), and an article by Rosalind Scutt about CLTs as a possible answer to the escalating price of housing featured on the websites of Aussie Home Loans (Scutt 2010a) and Channel Nine Finance (Scutt 2010b). Other mainstream media has featured stories on CLTs including the ABC (Tickle 2010) and the Sydney Morning Herald (Munro 2010). There is interest amongst local government and CLTs are being investigated by federal and state governments as a way of increasing Indigenous home ownership. Community-based CLT groups have formed and have held public forums.

Previous AHURI research has discussed CLTs briefly in the context of a review of suite of shared equity and shared ownership schemes (Pinnegar et al. 2008). However, this project is the first to offer a comprehensive review of the model. The previous review overlooked some aspects of the intent and operation of CLTs, particularly in relation to management of the complexity of equity transfer, the capacity for community development and involvement through the model, and enforceability of operating rules and requirements. As outlined earlier in this report, CLTs in the US do provide clear rules for equity transfer and are based on legal documents such as a ground leases signed by the buyer that can be enforced at law.

Full (market) home ownership is assumed to be the most desirable outcome by many commentators, policy-makers and researchers. An alternative view is that the provision of affordable home ownership via CLTs can increase wealth in other ways, such as provision of a manageable mortgage leading to greater disposable income, against a ‘full ownership’ option which may impose an unworkably large mortgage in an overheated housing market. Moreover, CLTs generally serve those unable to access ‘full’ home ownership, so provide access where this would otherwise be unavailable. The CLT buyer who sells their interest in a CLT property can make some financial gain, receiving back that which they have paid in mortgage repayments—which would have otherwise been spent on unrecoverable rent—plus a modest share of the gain on the re-valued property according to the CLT’s formula. The CLT buyer is therefore better off than they were before as a renter and have accrued some equity, which would not have been the case otherwise.

4.2.2 Banks and finance

Because CLTs are a new type of product, they require a new type of understanding from lenders. Banks can lend against interest in land, including 99-year leases, and against shorter leases where there is a business; for example, on a commercial lease. Currently, 99-year leases apply across a range of leases, including pastoral leases and residential land leases. However, lenders need to assess security before lending, which implies that in the case of default, there is an asset that can be repossessed and sold. By virtue of holding title to the land, the CLT as landowner is ultimately responsible for securitising any loan made to an individual from a lender who has entered into a lease on CLT land. In the US, social and mainstream lenders have lent to CLT buyers after a degree of familiarisation and hand-holding on the part of the CLT sector. Because of the eligibility process and requirement to undertake training, default rates are low—typically below 1 per cent (see 2.4.2). However, the CLT must have enough in reserve to cover a default situation to avoid foreclosure and loss of a land parcel if an owner defaults.

In Australia, banks already lend on 99-year lease residential properties in the ACT. Despite four reviews of the ACT's land system, the Crown still owns all ACT land. Even though the Crown stopped charging ACT residents ground lease fees in 1971, these powers remain. The ACT government is now revising the ground rent practice in its land rent scheme, whereby buyers of vacant blocks of land pay ground rent until they build a new home, which has to occur within two years (ACT Government 2011). At that time they enter into a normal 99-year lease arrangement with the Crown, as all land is leased land in the ACT (however this does not result in an inferior form of ownership to 'fee simple' ownership in practice). The same occurs in relation to western lands leases in NSW, whereby the Crown grants 99-year leases predominantly for pastoral leases. CLTs would do the same – a 99-year lease confers home ownership equivalent interest in the land (due to the length of the lease), exclusive right of occupancy and control over the land and its fixtures. There is still security available; if a homeowner defaulted, another buyer could not be found and the CLT could not repay the debt to a lender, a lender could repossess that parcel of land (and its fixtures) from the CLT. Therefore a lender can lend on an interest in land such as a lease, but would prudently consider the financial position of the CLT, the value of the land and fixtures as security, in addition to the financial position of the individual borrower who is purchasing the 99-year lease.

4.2.3 Scale

In any CLT scheme, scale can be a factor in its success or failure. There must be a sufficient number of persons waiting to buy in and future buyers to keep the scheme going, or otherwise sufficient reserves to cover purchase by the CLT when a home owner sells. If membership is drawn from a small catchment (for example, from a small town), is located in a remote area, or is restricted to a minority of the inhabitants (for example, to an ethnic minority), there may be restrictions based on insufficient scale. Any CLT must ascertain what scale works for its scheme and ensure that there are enough potential buyers for sellers at any one time to keep the scheme going.

Example 1:

A CLT is established in a regional town of 20 000 people. After several public forums run by the CLT and publicity in the local paper, 1000 people (5% of the town's population) decide to join the CLT. The CLT acquires 50 properties via government transfer and bequest by local philanthropists. 80 per cent of those who have joined the CLT are deemed eligible for the CLT home ownership scheme while 20 per cent are not deemed eligible. This leaves 800 people on the CLT waiting list. A lottery occurs and fifty people are selected. All raise mortgages and become CLT homeowners. After five years, five people decide to sell. In the meantime 20 people have since left town and the CLT but 30 have moved to town and joined the CLT. Ten others are deemed no longer eligible because of increases in income. However this means 750 people are still eligible. Because there is so much demand, the CLT has to conduct another lottery to determine who can buy the properties. The CLT reviews its waiting list and the household profiles and decides to combine some of its reserves with new funding to buy a block of eight units and five more houses to help meet demand.

Example 2

Three hundred people of a certain ethnic group live in a remote town of 500 people. There is a proposal to start a CLT as a way of getting this specific ethnic group people into home ownership. It is proposed that the CLT is restricted to those in this ethnic group who are earning an income. However, because there is limited employment opportunities, 250 of the 300 are not earning any income. Fifty are working in local industries such as agriculture, tourism and the abattoir. The CLT is given a Federal grant which allows it to build 45 homes. It houses 43 of the eligible applicants. After three years, five homeowners want to sell. New buyers are sought but out of the seven who were originally eligible, one has bought a house in another town, another has died, one does not like the house on offer, another has four children and the house is too small, and another person has moved away. Two buy two of the houses, but the CLT is forced to buy back three houses. In the meantime the local abattoir has closed and incomes have stagnated. There are not likely to be any new jobs so there are no more people becoming eligible for a CLT house. The CLT may have to consider relaxing its eligibility criteria in relation to incomes, opening up the scheme to people from further out of town (but of the same ethnicity) or selling off the houses as surplus.

As these examples show, scale is not only about absolute numbers in a community, but also about demand and stock available. If there is not enough demand, resales will be slow and the CLT will come under financial pressure. If there is high demand, the CLT will be viable but the goal would be to increase the number of properties to maximise the benefit to the greatest number of people and prevent bottlenecking. Where a CLT has a small number of properties, if a number of defaults or failures of resale occur at once, the CLT is vulnerable financially, whereas a larger CLT that holds more stock can cushion itself against losses more effectively provided there is healthy demand.

4.2.4 The potential roles of CLTs in Australia

Australia's housing market currently presents little by way of options between social rental housing and market-rate ownership, except for some state-based government low income home ownership schemes that operate in a number of the smaller state jurisdictions (see Pinnegar et al. 2009). Largely through the application of subsidies provided under the National Rental Affordability Scheme (2008), the not-for-profit housing sector is expanding and providing rentals to households further up the income ladder. While a welcome addition to the landscape, that housing is subject to income restrictions and fixed tenancy terms, which can make households vulnerable to the vagaries of the open market when their incomes rise or tenancy ends.

Various states are expanding into the provision of dual mortgage schemes (subsidy recapture on Figure 8). These are providing an entry-level product for home purchase but may not achieve ongoing affordability outcomes. As can be intimated from the range of potential models in Figure 2, there may be a role for models that can bridge the divide between existing tenures and provide a range of stable and appropriate options.

The not-for-profit housing sector currently consists of affordable rental providers, including zero-equity (rental cooperatives). CLTs may represent a future expansion of these providers' activities. As with some instances in the USA, existing community housing providers may be able to seed a CLT program within their organisation. Likewise, there may be scope for CLTs to underpin the growth of the cooperative housing sector and its expansion into limited equity forms. Australia has yet to apply any form of resale restrictions to its budding dual mortgage schemes as normal practice; it may be that supervision of resales in such programs could also be a role played by CLTs, as in some instances in the USA. There may also be resonance with current efforts to increase home ownership on Indigenous lands, particularly in ways more in line with the range of housing objectives and ambitions highlighted by the work of Memmott et al. (2009).

5 CONCLUDING COMMENTS

The paper describes the core elements of CLTs, emphasises the large number of variations in the sector and shows how the basic structure can be varied depending on housing market context, the objectives of the CLT, the sources of funding and a range of other factors. The paper also describes in some detail a number of international CLT case studies.

The CLT sector experience in both the US and UK has largely been one of initial broad unfamiliarity and reluctance. This situation has been found amongst lenders, governments and prospective residents. Overcoming this has required substantial volunteer effort and logistical support from dedicated agencies working to generate acceptance, programs and a degree of consistency. It is noteworthy that over time reservations about the sector have been reduced as a result of the positive performance of CLTs regarding community stabilisation, increasing housing access, delivering equity gains to homeowners and maintaining affordability across resales. Both the US and UK literature focus heavily on the community capacity building aspects of CLTs. While CLTs are portrayed and promoted slightly differently according to its social, economic and political contexts, CLT proponents in both countries argue they are in a unique position to do more than housing. The sector in the US also argues that it represents a far more efficient use of public subsidies than many forms of housing assistance by creating a permanent stock of resale-restricted homes that also delivers equity gains to its residents. The US sector also has had the opportunity to track a number of resales and performance over time, which indicate the model can perform well when adequately supported by public or community agencies.

The positive outcomes in the CLT sector in the US particularly suggest that CLTs are worthy of further consideration in Australia. Both the Australian appetite for home ownership and the serious barriers to home ownership developing for low- to moderate-income households support this position. The expansion of the affordable rental sector in Australia highlights the need for entry-level ownership products that can facilitate the transition of households from such affordable rental to home ownership without full exposure to the housing market. As in the US, there appears to be a role for programs or organisations based on similar principles to CLTs, to provide a range of diverse tenure options that can span the increasingly difficult divide between current rental and ownership housing tenures in Australia. The core principles of CLTs centre on the idea of stewardship—that is, an ongoing and responsible concern for the community, for the community or public assets (the land and/or housing stock), and for the individual or household. This concern then shapes the operations undertaken, their implementation and their governance. As such, CLTs represent an approach to housing shaped by certain principles in response to local conditions, rather than a particular tenure model rolled out homogeneously.

A key outcome from the research so far has been to provide extensive documentary material and evidence with a view to assisting a variety of stakeholder groups that have an interest in understanding and evaluating CLTs. These include housing organisations, citizens groups, low and moderate income households, policy-makers, legislators and financial institutions. The record shows that CLT activities are scalable, resilient to a variety of financial contexts, protect the financial interests of low to moderate income households even in times of financial crisis, are very flexible and can respond to local circumstances. The viability of core CLT principles within an Australian context warrants further exploration.

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APPENDICES

Appendix 1: US federal definition of community land trusts

H11966 CONGRESSIONAL RECORD – HOUSE October 5, 1992

SEC. 212. HOUSING EDUCATION AND ORGANIZATIONAL SUPPORT FOR COMMUNITY LAND TRUSTS

(a) COMMUNITY LAND TRUSTS. — Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C 12773) is amended –

(1) in subsection (a)(2) by inserting “community land trusts” after “organizations”;

(2) in subsection (b), by adding at the end the following:

(6) COMMUNITY LAND TRUSTS.—Organizational support, technical assistance, education, training, and community support under this subsection may be available to community land trusts (as such term is defined in subsection (f) and to community groups for the establishment of community land trusts”; and

(3) by adding at the end of the following:

(f) **DEFINITION OF COMMUNITY LAND TRUST**.—For the purposes of this section, the term “community land trust” means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 104(6) shall not apply for the purposes of this subsection)—

“(1) that is not sponsored by a for-profit organization

“(2) that is established to carry out the activities under paragraph (3);

“(3) that—

“(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

“(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

“(C) retains a pre-emptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate income families in perpetuity;

“(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

“(5) whose board of directors—

(A) includes a majority of members who are elected by the corporate membership; and

(B) is comprised of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.”

Appendix 2: Comparison of resale formulae

Itemised Formula

Narrative Description of Itemised Formula	***Symbolic Description of Itemised Formula***	***Advantages of Itemised Formula***	***Disadvantages of Itemised Formula***
Itemised formulas adjust the original purchase price by adding or subtracting factors that affect the value of the owner's investment in a home and the value of the home itself. Factors included in an itemised formula vary widely from one CLT to another, but commonly included are: an inflation adjustment; a credit for the value of later improvements, a deduction for depreciation (if the home is not maintained), and a penalty for unusual damage. **Variations:** There is wide variety in the method and index used to adjust for inflation. There is wide variety in what is deemed a 'useful' improvement and in how the value of improvements is calculated. Depreciation is sometimes NOT included as a factor subtracting value. Public and private subsidies sometimes ARE included as a factor subtracting value.	**Purchase price** **+ (Homeowner equity invested or earned to date x inflation factor)** **+ Value of improvements added by homeowner** **– Depreciation** **– Damage beyond normal wear and tear** ______________ **= Resale price**	1. The equity that an owner receives is tied directly to a measurement of her personal choices and personal investment of time and money. 2. An inflation adjustment can prevent the devaluation of the owner's earned equity, while not giving unfair advantage to a homeowner with a small amount of equity in a valuable property. 3. A distinction can be made between 'useful improvements' and 'luxury improvements', with only the former adding to the resale price. 4. There is an incentive for sound maintenance and repair – and penalties for deferred maintenance damage. 5. Itemised formulas are insulated from the market and do not depend upon appraisals of market value. They avoid the potential difficulty of achieving dependable appraisals and of separating out the market value of land from the market value of buildings. 6. Because they do not depend on an appraisal of market value at the time of resale, itemised formulas allow an owner's potential equity to be calculated and reported from year to year.	1. Depending on the index of inflation that is used, inflation adjustments can push resale prices beyond the reach of households whose incomes do not keep up with inflation. 2. These formulas require difficult-to describe and difficult-to-quantify distinctions between improvements vs. repairs, useful improvements vs. luxury improvements, the value of materials vs. the value of labor. 3. The CLT's oversight role in reviewing and approving proposed improvements – and in calculating the value of those improvements -- can diminish the owner's sense of privacy and can lead to disputes between the owners and the CLT. 4. An accumulation of improvements over an extended period of time -- even if none are considered luxuries-- can push the resale price beyond the financial reach of future low-income homebuyers. 5. If depreciation is a factor, separate depreciation schedules must be adopted for each major system in a house and records must be kept of on-going repair. 6. The valuation of 'unusual' wear and tear can be elusive (and contentious). 7. Itemised formulas make enormous demands on CLT staff time, requiring extensive record-keeping and periodic calculations of great complexity – lots of moving parts to track, count, and explain.

Appraisal-based Formula

Narrative Description of Appraisal-Based Formula	***Symbolic Description of Appraisal-Based Formula***	***Advantages of Appraisal-Based Formula***	***Disadvantages of Appraisal-Based Formula***
Appraisal-based formulas adjust the original purchase price of a CLT home by adding a certain percentage of any increase in the home's market value, as measured by market appraisals at the time of purchase (**Appraisal1**) and at the time of resale (**Appraisal2**). The percentage of this appreciated value allocated to the homeowner is stipulated in the formula (25% is common, although some CLTs allocate a higher percentage). Appraisals are done for the building alone, not for the combined value of the land and building. **Variations:** Some CLTs have added a credit for later improvements. Some CLT's have used a % that increases over time, so that the longer a homeowner stays, the more appreciation s/he gets when s/he leaves. * Some CLTs appraise the value of **both** the land and building, use a ratio to determine how much of the property's value is owned by the homeowner, and then apply a % to appreciation.	**Purchase price +** **[(Appraisal2 – Appraisal1) x %]** ______________ **= Resale price**	1. Appraisal-based formulas are easy to explain and easy to understand. 2. Because they rely on professional appraisals, utilizing standard techniques for appraising market value, these formulas do not require CLT staff to make difficult and potentially controversial assessments of value. Chances for conflict between homeowners and the CLT are reduced. 3. These formulas avoid the difficulties involved in distinguishing repairs from improvements, in assessing the value of improvements, and in gauging 'wear and tear'. The difficulty involved in inflation adjustments is also avoided. 4. There is no need to intrude on the owner's privacy and sense of ownership to approve and evaluate improvements. 5. These formulas discourage the accumulation of expensive improvements over time that can push the resale price beyond the reach of future low-income homebuyers. 6. Detailed record-keeping and fussy arithmetic are not required, relieving CLT staff of burdensome tasks and avoiding the disputes that can result from inadequate or incomplete records.	1. Appraising real estate is not an exact science, particularly when the value of land must be distinguished from the value of a building located on that land. 2. These formulas do not allow year-to-year measurement of the owner's equity (except for equity built up through debt repayment) unless an owner wants to bear the expense of periodic appraisals. 3. In a rapidly appreciating real estate market, appraisal-based formulas can allow resale prices to rise beyond the affordability level for future homebuyers if the percentage of appreciation allocated to the present owner is too high. 4. These formulas do not distinguish between value added by the owner and value added by market (a factor that is beyond the owner's control). 5. In a stable real estate market, owners who have made substantial improvements will recapture only a portion of what they have invested. There is, therefore, a disincentive for making improvements and, perhaps, for replacements. 6. Market appraisals in an appreciating market may not take adequate account of poor repair. These formulas may fail to encourage good maintenance.

Indexed Formula

Narrative Description of Indexed Formula	*Symbolic Description of Indexed Formula*	*Advantages of Indexed Formula*	*Disadvantages of Indexed Formula*
Indexed formulas adjust the original purchase price by applying a single factor—the change in a particular index between the date the homeowner purchases his/her home and the date s/he resells that home. This index, which is specified in the formula, can be a measure of incomes in the CLT's service area (e.g., change in median income) or a measure of rising costs (e.g., the CPI for housing). Although indexed formulas are not as common as appraisal-based formulas among CLTs, they are quite common among public programs that subsidize low-income rentals and low-income home ownership. Indexed formulas pegged to AMI are increasingly being used in rapidly appreciating markets **Variations:** There is wide variety in the index used in these formulas. Some indexed formulas add a credit for later improvements made by the homeowner.	**Purchase price** **x Change in index** ________________ **= Resale price**	1. If the index is pegged to the income of people for whom the CLT is trying to keep housing affordable, these formulas do a good job ensuring that the resale price will, indeed, be affordable for this target population in the future. 2. Depending on the index used, these formulas can give a sizable return to homeowners who sell their homes, promoting mobility for low-income people. 3. A formula that uses median income as its index fits easily and understandably into the guidelines of most federal and state housing subsidy programs, eliminating the need for lengthy negotiations. 4. Depending on the index used, the information needed to calculate resale prices is readily available—and verifiable—by homeowners and staff alike. 5. These formulas are relatively simple and comprehensible and do not require judgments by CLT staff or professional appraisers. Occasions for misunderstandings and disputes are minimized. 6. Administration by CLT staff is simple, easy, and inexpensive, requiring neither the record-keeping of itemized formulas nor the market appraisals of appraisal-based formulas.	1. Everything hinges on choosing the 'right' index. Even median income can prove to be the 'wrong' index, since low-income people often do not benefit from economic trends that increase median income for an SMSA or a county. 2. An index that is accurate in tracking the income of low-income people may still fail to keep housing affordable, because other factors—most notably, increases in mortgage interest rates—affect the home's affordability. 3. These formulas do not distinguish between appreciating value produced by the owner and value produced by other factors. Some owners may not receive a reasonable return on their investment, while others may benefit richly from appreciation they did little to produce. 4. These formulas may provide scant incentive for repairs and improvements. A change in the index gives owners an automatic increase in price, even for a poorly maintained, unimproved home. 5. These formulas allow shorter-term owners with little equity and a large mortgage debt to capture the same appreciated value as longer-term owners who have paid down their mortgages. This may encourage shorter occupancy.

Mortgage-based Formula

Narrative Description of Mortgage-Based Formula	***Symbolic Description of Mortgage-Based Formula***	***Advantages of Mortgage-Based Formula***	***Disadvantages of Mortgage-Based Formula***
Mortgage-based formulas adjust the resale price based on the amount of mortgage financing a purchaser of a given income level will be able to afford at the then current interest rate. Factors that must be specified in designing a mortgage-based formula ***must*** include: the income level for which the home must be affordable what is to be included in monthly housing costs the front end ratio allocation for monthly housing costs the percentage of the resale price that is to be covered by mortgage financing the type of mortgage (term, fixed-rate, etc.) for which monthly payments are to be calculated at the current interest rate the index or benchmark that will be used to determine the exact 'current interest rate' for the type of mortgage in question for the time in question.	**Resale price =** **price affordable to household at __% of area median income adjusted for family size assuming the following conditions:** **housing costs = principal, interest, taxes, insurance, lease fee & any HOA fees** **__% front-end ratio** **__% of resale price to be covered by mortgage** **at prescribed terms and requirements for mortgage (e.g., 30-year term, fixed rate, etc.)** **at 'current interest rate', as defined**	1. The mortgage-based formula is the only formula that can guarantee a given level of affordability at resale to a household at a given income level—regardless of what happens to interest rates, property tax levels, increases in market values and the like. 2. The basic principle—to make sure each successive buyer has monthly housing costs at the same level of affordability—is easy to grasp for homebuyers, mortgage lenders, and others directly involved in the buying and selling of homes.	1. These formulas base the resale price entirely on what works for the buyer; therefore, these formulas are less likely than the others to give the seller a fair return—and may give a return that is dramatically unfair. 2. As these formulas are based on factors over which the seller has no control, the process for selling tends to become distorted. If interest rates are high, sellers would be penalized—prompting them to delay selling or tempting them to violate occupancy requirements. 3. Mortgage lenders would have reason to object to a formula that could result in a resale price lower than the amount owed on the mortgage. 4. Government funding agencies with regulations requiring that resale restrictions allow seller a 'fair return' may likely not approve. 5. It can be difficult to establish a clear index or 'benchmark' to determine the 'current interest rate'. 6. As the resale price has no real basis in value, there is little motivation for owner to make improvements to the home. 7. Homeowners are likely to be unfamiliar with how to calculate resale price—potentially creating trust and eroding homeowners' sense of controlling their own homes.

Source: Burlington Associates 2008a

Appendix 3: Shared equity mortgages, deed covenants and ground leases compared

	Shared Equity Mortgage* ***(Subsidy Recapture)***	***Deed Covenant*** ***(Subsidy Retention)***	***Ground Lease*** ***(Subsidy Retention)***
What is the contractual means by which restrictions are imposed?	A provision to recapture the original subsidy is secured by a lien on the property in the amount of the subsidy. These 'soft' mortgages are subordinated to the conventional first mortgage.	A restrictive covenant is appended to the deed for land and house. (In condos, it is attached to the unit deed.)	Provisions are contained in the ground lease, regulating the resale and use of structures located on the land.
What kinds of restrictions are imposed?	The only restrictions that can be placed in a mortgage lien are ***subsidy recapture*** provisions, designed to reclaim the value of subsidies so these subsidies can be recycled for future uses. Restrictions on ***use, occupancy*** or ***resale*** cannot effectively be stipulated in a mortgage instrument.	Most deed restrictions control the ***price*** at which a unit may be resold, define the ***eligibility*** of the next buyer, and require continued ***occupancy*** of the unit by the current owner. A few delve into various 'use' restrictions as well, but this is less common.	The ground lease contains the same kinds of restrictions on resale price, eligibility, and occupancy found in restrictive covenants. In addition, there are lease provisions regulating maintenance, insurance, mortgaging, subletting, and improvements (among other things).
How long are restrictions designed to last?	Typically, 'soft' mortgages are limited to a maximum of 30 years – the typical term for a conventional first mortgage.	Mortgages can have terms of varying lengths. Most deed restrictions are designed to lapse after a relatively short period (e.g., 10 years), although some are intended to be permanent, i.e., 'running with the land.' In almost every state, 'perpetual' deed restrictions are considered invalid as a 'restraint on alienation' or violation of the 'rule against perpetuities.' Some states limit these restrictions to 30 years (sometimes less).	The lease typically lasts for a very long period of time (e.g., 99 years) and may be renewed at the option of the lessee.
How legally enforceable are the restrictions?	A recorded mortgage is a familiar and acceptable legal mechanism—and is commonly enforceable. As mortgages typically are limited to a maximum of 30 years, they are typically not subject	Generally, the longer the duration of the restriction and the farther the party imposing the restriction is removed from the property, the less defensible is the restriction. (Enforceability rests on meeting legal tests of 'privity,' 'touch and concern,' and benefit to a	Because the lease term is finite (even if the lease is renewable) and because the lessor has a close and continuing connection to the restricted property, affordability restrictions in a lease are

	Shared Equity Mortgage** *(Subsidy Recapture)	***Deed Covenant (Subsidy Retention)***	***Ground Lease (Subsidy Retention)***
	to challenges as ‘restraints on alienation’ nor are they subject to the ‘rule against perpetuities’.	nearby parcel owned by the same party who is imposing the restriction.) Some states have enacted laws explicitly sanctioning ‘perpetual’ deed restrictions; others have not.	generally more enforceable for a longer period of time than those attached to a deed.
What happens to affordability once the term of the restriction comes to an end?	In appreciating markets, the affordability disappears at the time of resale and repayment of the mortgage.	Upon expiration of the covenant, all restrictions on affordability are removed. The property may then be sold for the highest price that the market will bear.	Upon expiration of the lease, either the lease is renewed (along with affordability controls) or the lessor takes possession of any structures located on the land.

*This corresponds to current Australian models of ‘shared equity’ such as Western Australia’s KeyStart. Source: Burlington Associates (2008b)

Appendix 4: UK national definition of a community land trust

The following is the official legal definition of a Community Land Trust, as found in the Housing and Regeneration Act 2008, Part 2, Chapter 1, Clause 79:

A Community Land Trust is a corporate body which:

1. Is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order:

→ To provide a benefit to the local community.

→ To ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community.

2. Is established under arrangements which are expressly designed to ensure that:

→ Any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members).

→ Individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members).

→ The members of a trust control it.

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Australian Housing and Urban Research Institute

Level 1 114 Flinders Street, Melbourne Victoria 3000

Phone +61 3 9660 2300 Fax +61 3 9663 5488

Email information@ahuri.edu.au Web www.ahuri.edu.au