



Community Land Trusts: The Property Tax Issue

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The Florida Housing Coalition is working with local governments and their nonprofit partners in developing and implementing community land trusts throughout the state. The public and private investment in community land trusts is growing steadily.



HOW WILL THE VALUE OF THE COMMUNITY LAND TRUST HOME BE ASSESSED?

This is the thorniest issue for community land trust homeowners. The fair market value of the community land trust home should clearly consider the resale formula which substantially restricts

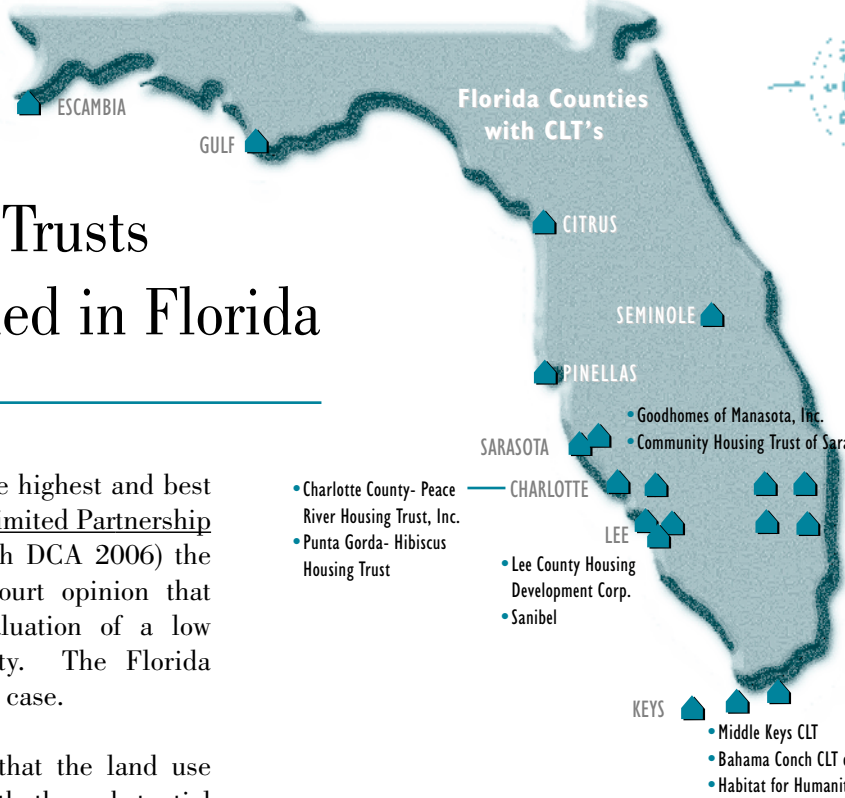
the value of the home upon sale by the owner. The owner has bought the house subject to the terms of the resale restriction and is therefore unable to sell the community land trust home for a price similar to the selling price of an identical home next door, not subject to a resale restriction. While it makes a great deal of legal and common sense for appraisers to reduce the assessed value of the home based on the resale restriction, it is likely that some county appraisers will, and some appraisers will not. Because of this uncertainty in the law and the detrimental effect of an assessment that is not adjusted based on the resale restriction, this is an area that should be addressed in the law.

There are several questions to be addressed in regard to real property taxation in Florida. The first question is whether the 501(c)(3) that owns the land will be exempt from ad valorem taxes pursuant to Section 196.1978, Florida Statutes. It appears the answer to that question will be “no”. Although the Community Land Trust ostensibly meets the criteria of Section 196.1978, Florida Statutes, as a 501(c)(3) providing housing to income qualified individuals, the CLT will most likely not be exempt from ad valorem taxes on the land. This is because the homeowner has a 99 year leasehold interest in the land, which the courts have held to be the functional equivalent of ownership. See Mikos v. King’s Gate Club, Inc., 426 So.2d 74 (Fla.2nd DCA, 1983); Leon Co. Educational Facilities v. Hartsfield, 698 So. 2d 526 (Fla.1997). Fortunately, pursuant to a similar line of reasoning, as well as Section 222.05, Florida Statutes, the homeowner will enjoy homestead exemption on its leasehold property.

THE HOLLY RIDGE CASE

A recent Fifth District Court of Appeal case makes clear that the Legislature’s role is to prescribe by general law what restrictions shall be recognized by property appraisers

Continued on page 17



Community Land Trusts Already Established in Florida

as land use restrictions that effect the highest and best use of the property. In Holly Ridge Limited Partnership v. Pritchett, 936 So.2d 694, (Fla. 5th DCA 2006) the Fifth DCA overruled the circuit court opinion that upheld the property appraiser’s valuation of a low income housing tax credit property. The Florida Supreme Court declined to review the case.

The District Court of Appeal held that the land use restriction agreement, which set forth the substantial and long-term restrictions placed on the property are to be considered land use regulations which impact fair market value of the property. The District Court cites to Article VII, section 4 of the Florida Constitution which provides: “By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation....”

Just valuation has been determined by the Florida Supreme Court to be synonymous with fair market value, to-wit, the amount a purchase willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. See *Valencia Center, Inc, v. Bystrom*, 53 So. 2d 214, 216 (Fla. 1989); *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965). The framers of the Constitution delegated to the Legislature the responsibility for deciding the specifics of how “just valuation” would be secured. *Sunset Harbor Condo. Ass’n v. Robbins*, 914 So. 2d 925, 932 (Fla. 2005).

Section 193.011 sets forth various factors which a property appraiser is required to take into consideration in determining just

valuation. Of particular significance in this case is subsection (2), which provides, in part, that a property appraiser shall consider the effect that any local or state land use regulation will have on the value of the assessed property.

The court found that the Land Use Restriction Agreement must be considered a land use regulation, and that the property appraiser did not comply with the clear dictates of section 420.5099, Florida Statutes, which states in part:

For the further purpose of implementing this program in Florida and in assessing the property for ad valorem taxation under s. 193.011, any extended low income housing agreement and all amendments and supplements thereto which are recorded and filed in the official public records of the county where the property is located shall be deemed a land use regulation during the term of any such agreement, amendment, or supplement. Section 420.5099 (6), Fla. Statutes.

Continued on page 18



**PROPOSED STATUTORY
AMENDMENT FOR COMMUNITY
LAND TRUSTS**

Based on the 5th District Court of Appeals decision in the Holly Ridge case, a new statute such as the language proposed below would provide guidance to property appraisers to facilitate the intent of using a community land trust to provide affordable homeownership.

193.018 Community Land Trusts. — Improvements used for permanently affordable housing subject to a 99 year ground lease shall be assessed under s. 193.011 pursuant to this section.

1. The amount a willing purchaser would pay a willing seller is limited to the restricted resale price permitted under the 99 year ground lease.

2. If a 99 year lease agreement or memorandum of such agreement containing a resale restriction for the purpose of providing permanently affordable housing is filed in the official records of the county in which the property is located, the lease agreement and any amendment or supplement thereto, shall be considered a land use regulation and a limitation on the highest and best use of the property during the term of the lease or lease renewal.

If the Florida Legislature also wants to provide exemption for the land that is owned by the community land trust, section 196.1978 on affordable housing property exemption could be amended to provide that the exemption is section 196.1978 extends to land that is owned by an exempt entity subject to a 99 year ground lease for the purpose of providing permanently affordable housing.



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COMMUNITY LAND TRUSTS IN FLORIDA	
REGION	Status
NORTHEAST	
NORTHWEST	
Escambia County Community Land Trust, Inc.	Formed
Gulf County Community Land Trust	Formed
City of Destin	Exploring
Bay County	Exploring
CENTRAL	
Citrus County-Florida Low Income Housing Associates, Inc.	Formed
Pinellas County	Exploring
St. Petersburg Neighborhood Housing Services, Inc.	Formed
Hannibal Square- Winter Park	Formed
Brevard County	Exploring
SOUTHEAST	
Palm Beach County-Northside Renaissance, Inc.	Formed
Palm Beach County- Adopt-a-Family	Formed
Palm Beach County- Housing Partnership, Inc.	Formed
Palm Beach County	Exploring
Palm Beach County- Delray Beach Community Land Trust	Formed
Middle Keys Community Land Trust	Formed
Bahama Conch Community Land Trust of Key West, Inc.	Formed
Florida Keys Community Housing and Land Trust-Habitat for Humanity	Formed
St. Lucie County	Exploring
City of Hollywood	Exploring
Martin County	Exploring
Broward County	Exploring
City of Homestead	Exploring
SOUTHWEST	
Lee County	Formed
Collier County	Exploring
Lee County Housing Development Corp.	Formed
Sanibel	Formed
Charlotte County- Peace River Housing Trust, Inc.	Formed
Punta Gorda- Hibiscus Housing Trust	Formed
Goodhomes of Manasota, Inc./Community Housing Trust of Sarasota County	Formed
Cape Coral Housing Development Corp.	Exploring