



The Obligations of the Community Land Trust to the Homebuyer

BY CHARLES ELSESSER, ESQ.

There are a number of reasons why the Community Land Trust (and its attorney) must be far more concerned than the normal seller in ensuring that the buyers in a Community Land Trust purchase are fully informed and counseled prior to the purchase transaction.



The legal structure of the Community Land Trust purchase and sale is different from that which most residential buyers had ever previously experienced. As opposed to the transfer of a fee simple interest with which most buyers, even first time buyers, are generally familiar, the CLT purchase and sale involves the transfer of a leasehold interest in the land and a fee simple transfer of the improvements alone. Many attorneys may have difficulty understanding this concept; unsophisticated buyers will undoubtedly need a great deal of explanation.

In a Community Land Trust purchase buyer is severely restricted in the resale price through the option to repurchase and resale restrictions incorporated in the long term lease. During an economic period in which one's investment in their own home is also seen as a major wealth building and retirement vehicle, it is extremely difficult for many potential buyers to grasp the idea of limited return on equity.

As a result of the expectation of asset growth, one of the greatest threats to the stability of a CLT can come from within as purchasers, who were not fully aware of the CLT structure at the time of purchase, may want to cash out their equity in a rapidly escalating real estate market.

By the nature of the transaction, the CLT is providing purchasers with an opportunity to own a home which would otherwise have been unaffordable to them. The purchasers, by virtue of the CLT marketing efforts, may be less educated or less sophisticated than wealthier purchasers of market rate real estate. The opportunity to own their own can often cause purchasers to overlook or ignore “the details” of a transaction, regardless as to how well it is explained. This can result in buyers, fairly or unfairly, feeling taken advantage of - post purchase - when they fully understand the details of the CLT process.

Given that the CLT's goal is the long term benefit of the initial and subsequent purchasers through a non-speculative residential real estate market, and that the long term involvement of the purchasers in the CLT itself is a vital element of the process, it is extremely important that the purchasers emerge from the purchase and sale transaction fully informed and satisfied with all aspects of the purchase transaction.

CLT USE OF STANDARDIZED PURCHASE AND SALE DISCLOSURES

Protection for the CLT begins with a standardized set of disclosures which must be read and reviewed by the purchaser. The CLT attorney should recommend that those disclosures, or any adapted version utilized by the CLT, not only be utilized as standardized disclosures but also as a fundamental part of any pre-purchase counseling process.

PRE-PURCHASE INFORMATION AND COUNSELING

For the reasons mentioned above it is vitally important that there be extensive pre-purchase materials explaining the nature of the program and that CLTs require purchasers to participate in a pre-purchase orientation and counseling program. However, this pre-purchase process raises a number of legal concerns for the Community Land Trust and its attorney. Community Land Trusts in Florida are selling an extremely novel and complex form of ownership with severe limitations on appreciation to unsophisticated buyers. Consequently, the CLTs can run into difficulty either for failing to fully disclose the nature of the transaction or for disclosing it inaccurately.

ATTORNEY REVIEW OF WRITTEN MARKETING AND ORIENTATION MATERIALS

In addition to the utilization of standardized disclosures, Community Land Trusts will commonly use many other printed materials in its marketing and orientation efforts. All of these must be carefully reviewed by the attorney for the Community Land Trust as they must accurately reflect the transaction that the purchaser *in Florida* is entering into. Materials copied from CLTs in other states (or even from other parts of Florida) may not accurately reflect the transaction as it is structured for another CLT. It must be remembered that, for most purchasers, all that they know about the Community Land Trust transaction is what they have learned from the Community Land Trust itself. This creates a relationship in which the accuracy of the representations of the CLT, particularly the written representations, are extremely important.

REFERRAL OF THE BUYER TO COUNSEL

The Community Land Trust itself is not required to refer an unrepresented buyer to an attorney. However, given the disparate levels of sophistication and the unfamiliarity of most buyers with the Community Land Trust vehicle, it would be good practice for any

Community Land Trust to ensure that all purchasers are represented in the purchase. However, the Community Land Trust must keep in mind two potential areas of concern. First, any actual referral system creates a possible conflict of interest if the attorney representing the purchaser, in any way, depends upon the CLT for payment. Second, relatively few attorneys in Florida are going to be familiar with the CLT vehicle and that unfamiliarity may translate into concerns which either delay the transaction or cause unwarranted misgivings on the part of the purchaser. One possibility which obviates both concerns is a pro bono project in which the local real estate bar provides attorneys willing to represent low income households in these transactions and these attorneys are, in turn, provided with Continuing Legal Education in the mechanics of the Community Land Trust.

While independent representation by a knowledgeable attorney certainly assists greatly in ensuring that the buyer is fully informed and knowledgeable concerning the transaction he/she is entering into, we would continue to recommend that the Community Land Trust independently ensure that the buyer is fully informed through thorough orientation or some similar process.

POST-PURCHASE COUNSELING

Although not legally required, an ongoing program of post-purchase counseling is vital to a successful CLT. Many of the elements of the CLT structure, particularly the resale restrictions, do not affect the buyer until years after the purchase. If the concepts and benefits of the CLT structure are not reinforced through post-purchase counseling/training, the CLT community can suffer when, years later, members are suddenly reminded that they cannot sell their homes for the same amount as their neighbors across the street.



Charles Elsesser is an attorney with Florida Legal Services, specializing in affordable housing litigation and policy advocacy. Chuck serves on the board of the National Low-Income Housing Coalition and the Board of Directors for the Florida Housing Coalition, he is also a member of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

Homebuyer Training for the Prospective CLT Homebuyer

The Florida Housing Coalition is presently developing a comprehensive training module to be used as a supplement for existing homebuyer training/ pre-purchase and post -purchase counseling programs - specifically for the prospective Community Land Trust Homebuyer. Once the materials are developed we will hold “train the trainer” seminars around the state for distribution of the materials and to teach best practices for CLT homebuyer education both pre and post purchase.