

MORTGAGE & NOTE CHECKLIST
HOME BUYER PROGRAM
SHIP COMMUNITY LAND TRUST

This document is intended to provide a checklist of essential language that should be incorporated in your SHIP program's Community Land Trust (CLT) legal documents. The checklist below is focused on language that is specific to the unique nature of CLTs and of the Model Down Payment Assistance Strategy for CLTs. Coupled with this checklist is a set of model legal documents with key points that are highlighted in yellow.

This document will address the following documents: Mortgage; Note; CLT Approval Form. This document will also address several other forms a SHIP Jurisdiction should have ready at its disposal in achieving a successful CLT Down Payment Assistance Strategy.

Mortgage

- 1. Be clear that the security interest created by the mortgage agreement is of a fee simple interest the improvements with only a leasehold interest in the underlying land.**

First, it is essential that the mortgage document is clear that the security interest the SHIP entity holds is of the "buildings and improvements existing on the Leased Land and the Borrower's leasehold interest in the Leased Land." The SHIP entity should not obtain a fee simple security interest in the Leased Land itself. This is due to the unique nature of the CLT whereby CLT Homeowners merely hold a leasehold in the underlying land with a fee simple interest in improvements and buildings on top of the land. Since the CLT Homeowner cannot mortgage or otherwise alienate a fee simple interest in the Leased Land, it is best practice to be clear that the SHIP entity cannot obtain fee simple in the event of default by the CLT Homeowner.

Being clear with this language is essential in determining ownership in the event of default. There have been unfortunate occurrences where CLTs have lost their fee simple interest in the underlying land due to the mortgage documents being unclear about the security interest at issue.

- 2. To successfully retain the subsidy in the home, be sure the mortgage is assumable by subsequent income-eligible homebuyers and allow the prior homebuyer to be released from the mortgage.**

A key aspect of ensuring the government subsidy is retained in the CLT home is to have specific language stating that the mortgage is assumable by subsequent income-eligible homebuyers. There should also be language, as reflected in the Model DPA Strategy, that the CLT must approve the subsequent homebuyer and then promptly notify the local government prior to the execution of the assumption

agreement. It is best practice to have a signed mortgage assumption agreement for the CLT, buyer, and seller to be a party to in the event of a subsequent purchase.

Also, it is key to have a Release Agreement that releases a seller from personal liability under the mortgage upon a subsequent purchaser assuming the mortgage.

3. Follow the Down Payment Assistance Strategy's Event of Default(s).

Each local government may have different definitions of what constitutes a default under the SHIP CLT Down Payment Assistance Strategy. Under the Model CLT Add-On Language, a loan is in default if any of the following occurs: sale, transfer, or conveyance of property; conversion to a rental property; loss of homestead exemption status; or failure to occupy the home as primary residence. In the Model, if any of these occur, the outstanding balance is due and payable.

4. Allow SHIP-eligible heirs to occupy the home.

Per the Model DPA Strategy, the mortgage should state that in the event the CLT Homeowner dies during the loan term, the obligations under the Note and Mortgage may be assumed by a SHIP-eligible heir as long as the heir occupies the home as a primary residence. If the legal heir is not SHIP-eligible or chooses not to occupy the home, the unforgiven balance is to be immediately due and payable.

5. Include language referencing the CLT's Right to Cure an event of default.

Pursuant to the Model Ground Lease, the mortgage agreement must incorporate a clause that states that the Lender and Borrower agree that the CLT has the option to cure an event of default as the steward of the Leased Land. The agreement should also recognize the CLT's right to purchase the improvements and leasehold interest in the event the Lender acquires title to the Homebuyer's interests through foreclosure proceedings. The agreement may state that the SHIP jurisdiction shall coordinate with the approved CLT regarding the default pursuant to the CLT's power granted under the ground lease.

Note

1. Follow your jurisdiction's Down Payment Assistance Strategy.

The key regarding the promissory note is to follow the terms of your SHIP jurisdiction's Down Payment Assistance Strategy regarding default occurrences, loan term, and loan amount. Pursuant to the Model Strategy, the loan should be treated as a deferred subordinate loan secured by a record subordinate mortgage and note. For very-low and low income homebuyers, the term of the loan is to be 10 years and the loan term for moderate homebuyers should be 30 years. Funds are to be forgiven on a prorated basis so that an equal amount is forgiven annually. The note must be clear that for those who comply with SHIP rules, assistance will be forgiven by the end of the

loan term and no repayment will be required.

Finally, be sure to state the occurrences of default in the Note as defined in the DPA Strategy.

2. Allow SHIP-eligible heirs to assume to loan.

As with the Mortgage, the Note should state that in the event the CLT Homeowner dies during the loan term, the obligations under the Note and Mortgage may be assumed by a SHIP-eligible heir as long as the heir occupies the home as a primary residence. If the legal heir is not SHIP-eligible or chooses not to occupy the home, the unforgiven balance is to be immediately due and payable.

3. Be clear that the Note is assumable by a subsequent income-eligible purchaser.

The Note should state that it is to be assumable by income-eligible subsequent purchasers with prior written approval by the Community Land Trust. Upon this approval, the CLT and the initial Borrower shall promptly notify the Lender.

CLT Approval Form

1. Basic Language

The CLT Approval Form is to document that the CLT at issue has been approved by the SHIP Jurisdiction to be involved in the DPA Strategy. Upon approval, prospective homebuyers can obtain Down Payment Assistance to purchase homes from the approved CLT.

2. State the duties of the Community Land Trust.

This form is a good opportunity to document the duties the Community Land Trust agrees to undertake in the SHIP Down Payment Assistance Program. Duties can include certain specified notice requirements, successful stewardship goals, and other duties as the SHIP Jurisdiction sees fit.

Other Documents

1. Mortgage Assumption Form/Release Agreement

A key element in retaining the subsidy in CLT homes is making sure subsequent homebuyers assume the obligations of the original Note and Mortgage. SHIP jurisdictions should have assumption agreements ready to facilitate smooth transition of CLT homes to subsequent homebuyers. Upon execution of a documented assumption agreement, a subsequent income-eligible purchaser will become personally liable under the terms of the Note and Mortgage.

SHIP jurisdictions should also draft release agreements to release CLT homeowners from personal liability upon a subsequent purchase of a CLT home. Coupled with an assumption agreement, a release agreement will ensure that prior homeowners are not still personally liable in the event of subsequent purchaser defaults on their obligations.

2. Form Attesting to the CLT Homebuyer's Qualifications

The Model DPA Strategy states that to be qualified as an applicant for purchase assistance, homebuyers must complete an approved homebuyer education class from a HUD certified agency and obtain a certificate of completion. Additionally, homebuyers must attend a homebuyer education class that contains a community land trust component and/or session with the CLT in addition to a homebuyer education class that requires CLT buyers to demonstrate and attest to a clear understanding of the terms of community land trust homeownership.

To ensure proper record-keeping on which applicants are qualified, a SHIP jurisdiction may decide to create a form that documents that a specific homebuyer has met all the requirements necessary for the homebuyer education.