

## Chapter 22

# CLT REAL ESTATE TRANSACTIONS

Other chapters in this Manual deal with issues relating to the CLT's distinctive approach to the ownership of real estate. This chapter deals less with the approach itself than with the practical concerns involved in *implementing* that approach as the CLT enters into various kinds of real estate transactions.

Before discussing the distinctive features of CLT transactions and the practical concerns raised by those differences, it may be useful to note the nature of a simple, conventional real estate transaction. In such a transaction, there is a single "piece of property," the ownership of which is transferred, in its entirety, from a seller to a buyer. If the buyer is financing the purchase with a mortgage loan, then, in the moment in which the transaction takes place, the lender will provide some portion of the money that is to be paid to the seller and will receive a mortgage (or deed of trust) on the property purchased by the buyer. If there is a prior mortgage on the property, that mortgage will normally be released as the outstanding loan is repaid with a portion of the proceeds of sale. This type of transaction, with its four basic roles – buyer, seller, buyer's mortgage lender, and seller's mortgage lender – is familiar to many people. In the case of CLT transactions involving a ground lease and separate ownership of land and improvements, the basic roles do not change, but the property interests that are transferred do change – because we are no longer talking about a single piece of property; we are talking about several property interests that can be bought, sold, and mortgaged separately within a single transaction. Specifically there are three such interests:

- the CLT's fee interest in the land (also called the "leased fee");
- the homeowner's "fee interest" in the improvements;
- the homeowner's leasehold interest in the land (the bundle of rights conveyed to the lessee-homeowner by the lease – sometimes called the "leasehold estate").<sup>1</sup>

In this chapter we will look first at the limited ways in which state and local factors may affect the way a CLT transfers these property interests. Next we will outline the various types of CLT transactions in which these interests are involved. We will then discuss the distinctive concerns that a CLT must address in order to ensure that such transactions are properly carried out. The chapter ends with a sample check list of tasks to be performed as a CLT prepares for and completes a transaction.

### CLT Transactions in Varying State and Local Contexts

Though the basic nature of real estate transactions does not differ from one locality to another or one state to another, the ways in which the transactions are accomplished do vary somewhat. The roles of attorneys and title companies in closing property sales are not the same in every state. There are state-to-state differences in the governmental entities that are responsible for recording deeds, mortgages and other documents. Recording fees and transfer taxes – and the procedures for collecting them – differ from jurisdiction to jurisdiction. Different kinds of permits may be required for certain kinds of transactions in different jurisdictions. States differ as to whether real estate loans are secured with mortgages or deeds of trust. And other factors may vary as well – based on differences in governmental structure, state law, local statutes, and custom.

It is important for a CLT to work with a local real estate attorney who is familiar with the ways that real estate transactions are handled in that locality. But it is also very important that the local attorney be comfortable with the distinctive features of the CLT's approach to ownership – even if that approach will entail some transactions that are different from what he or she is familiar with. It should be remembered that what is *usual practice* and what is *legally possible* are not necessarily the same.

There are very few ways in which either the specific content of a CLT ground lease or the nature of transactions involving a CLT ground lease are affected by differences in state law. Ways in which the content *may* be affected are noted in the commentary on the Model Ground Lease. One factor that may sometimes affect CLT transactions is the fact that (as noted in Chapter 10, “Legal Issues Re. CLT Ownership,” as well as in the Model Ground Lease Commentary) there are some states where the standard practice (whether based on law or custom) is to treat improvements on leased land as personalty, rather than realty, and therefore to convey them with a bill of sale rather than a deed. (Where this practice prevails, the CLT's concerns with the *content* of such a bill of sale will be the same as the concerns noted below regarding the content of deeds for improvements only.) Also, in at least one state (North Carolina), questions have been raised regarding the basic practice of separating the ownership of land and improvements (see “Leases That Do Not Separate Title to Improvements” in Chapter 10, “Legal Issues Re. CLT Ownership”). And in two states (Maryland and Hawaii), significant complications are created by the fact that ground leasing is quite common and specialized laws have been developed to regulate the practice.

For the most part, however, CLT transactions are influenced much more significantly by the varying concerns of mortgage lenders than by variations in state law. Any CLT that is told by a local attorney that it must adopt practices significantly different from those of CLTs in other states should seek a second opinion.

## **Types of Transactions**

Before discussing the types of transactions that are specific to the CLT approach to ownership we should note that certain types of CLT transactions are entirely conventional. When a CLT acquires developed land – or land to be developed – it normally receives fee simple title to the property. If the acquisition is financed with a mortgage, it is the entire property, including any improvements, that is mortgaged. The fact that the property is being acquired by a CLT rather than by some other corporation or individual does not affect the nature of the transaction.

However, transactions that involve a ground lease and separate ownership of improvements on leased land are different. As we have said, three different kinds of property interest – the fee interest in the improvements, the fee interest in the land, and the leasehold interest in the land – can be transferred in such transactions. For CLTs, the possible types of transactions involving these three interests include the following:

1. CLT transfer of improvements and leasehold interest to a homebuyer.
2. Transfer of improvements from one homeowner to another, with a new lease executed by CLT and new homeowner – or, if the terms of the existing lease permit, an assignment of the existing lease to the new homeowner (the current version of the Model Ground Lease does not permit assignment).
3. Transfers from a third party to the CLT *and* a homebuyer (three varieties).

4. Transfer of improvements from a homeowner to the CLT, with termination of the lease.
5. CLT transfer of the fee interest in the land (either to the homeowner or to a third party).
6. Transfer of the CLT's interests *and* the lessee's interests to a third party.

The essential features of these six types are outlined below.

**Note:** In discussing these transactions here we identify the buyer or owner of the improvements as the "homebuyer" or "homeowner," but the same types of transactions are possible with improvements used for nonresidential purposes.

**CLT Transfer of Improvements and Leasehold Interest to Homebuyer.** This kind of transaction takes place when a CLT has acquired or developed a home and then sells the house (the improvements) to a qualified homebuyer. The CLT transfers the *fee interest in the improvements* to the homebuyer by giving the buyer a deed for "improvements only." At the same time, a ground lease is signed by the CLT as ground lessor and by the homebuyer as ground lessee, giving the homebuyer a *leasehold interest in the land*. The purchase is typically financed by a mortgage lender who takes a first mortgage on the fee interest in the improvements and the leasehold interest in the land – but not on the fee interest in the land that is retained by the CLT. (Such a "leasehold mortgage" is usually described as a mortgage on a leasehold interest that *includes* a fee interest in the improvements.) In some cases there may also be a "silent" second mortgage on the improvements and leasehold interest when such a mortgage secures a deferred loan to the homebuyer for the purpose of subsidizing the cost to the homebuyer.

It should be noted that, if land and/or development costs have been subsidized through a deferred loan to the CLT, the agency providing the subsidy may take – or may already hold – a mortgage on the CLT's fee interest in the land. (See Chapter 20, "Financing CLT Homes," regarding the issue raised for mortgage lenders by this circumstance – and in particular regarding the way in which The Fannie Mae Uniform Rider allows the issue to be addressed.)

**Transfer of Improvements from One Homeowner to Another.** Once the ownership of the improvements has been separated from the ownership of the land, the improvements can be sold from one homeowner-lessee to another, with the purchaser simultaneously acquiring a leasehold interest in the land in either of two ways. The process required by the 2011 version of the Model Lease entails the CLT entering into a *new* ground lease agreement with the new owner, while terminating the seller's lease. The other process, permitted under previous versions of the Model and CLT leases based on those versions, entails the assignment of the existing lease, with the CLT's approval, from seller to buyer. In either case, the buyer's mortgage lender normally takes a mortgage on the leasehold interest (defined as including the improvements) at the point that the seller's mortgage on this collateral is paid off. If there has been a second mortgage (on the leasehold interest, including improvements) securing a deferred loan to the seller, that mortgage may be assumable by the new homeowner-lessee.

**Note:** When the improvements are sold from one homeowner-lessee to another it has been common for some CLTs to arrange, facilitate and oversee the sale without exercising their own option to purchase the home. However, the preferred practice for most CLTs is to formally exercise the purchase option and formally assign it to the new homebuyer, who can then complete the purchase in the way described in the paragraph above. In formalizing its

function in this way, the CLT has a basis for charging an “assignment fee” to the new homebuyer. It should also be noted that a CLT may charge a “transfer fee” to the buyer *without* exercising and assigning the option, as long as the lease explicitly permits the fee (as the 2011 version of the Model Lease does). Either type of fee will compensate the CLT for the costs entailed in assisting the homebuyer and arranging the sale. Such fees can be charged, at the discretion of the CLT, as long as the overall cost (assignment fee plus purchase price) is affordable for the buyer.

**Transfers from a Third Party to the CLT and a Homebuyer.** These transactions typically involve either a “turnkey” developer or a “buyer-initiated” homeownership program. In the case of the “turnkey” project, the property has been developed by a third party (either for-profit or not-for-profit), which owns the land during the development process. In the case of the buyer-initiated program, the buyer has found an existing home for sale on the open market. In either case, a CLT has agreed to acquire the land beneath the home, typically utilizing public funds at its disposal to cover some percentage of the cost of the whole property. Such third-party transactions can be structured in any of the three ways described below under “a,” “b,” and “c.” (Typically, multiple-party transactions such as these are executed in “simultaneous closings,” with either an attorney or a title company having responsibility for ensuring that all documents are properly signed, witnessed and recorded. In a simultaneous closing, the sequence in which documents are signed is not as important as the sequence in which they are recorded in the appropriate land records.)

- a) *Separate Acquisition of land and improvements by CLT and homebuyer.* In this case, the third party sells the homebuyer a *fee interest in the improvements only*, and sells the CLT a *fee interest in the land only*. The CLT then transfers a *leasehold interest in the land* to the homebuyer (signing a ground lease with the homebuyer). Normally, a mortgage lender takes a mortgage on the leasehold interest including the improvements. (Because it has only limited control over the condition of the premises and the improvements in a third party-transaction, a CLT may prefer to structure the transaction in this way to avoid any liability associated with such condition.)
- b) *CLT acquisition of property with immediate resale of improvements.* In this variation, the third party transfers a fee interest in the entire property, including improvements, to the CLT, which immediately transfers the *fee interest in the improvements* and a *leasehold interest in the land* to a homebuyer. As in the case of the approach described above, a mortgage lender normally takes a mortgage on the leasehold interest including the improvements.
- c) *Homebuyer acquisition of property with immediate resale of land.* This variation is similar to alternative “b” above, except that it is the homebuyer that first acquires the fee interest in the entire property from a third party. In exchange for the subsidy provided by the CLT, the homebuyer then transfers the *fee interest in the land* to the CLT, which in turn transfers a *leasehold interest in the land* back to the homebuyer. Again the normal practice is that a mortgage lender takes a mortgage on the leasehold interest including the improvements. (It should be noted that it is possible to structure such a transaction so that a lender takes a mortgage on the fee interest in land *and* improvements *before* the transfer of the land to the CLT – in which case, the fee interest in the land is transferred to the CLT *subject to* the mortgage, which continues to cover the fee interest in the land as well as improvements. The obvious

disadvantage of this approach, however, is that the mortgagee may then foreclose on the land as well as improvements.)

**Transfer of Improvements from Homeowner to CLT.** If the CLT wants to regain ownership of the improvements when the homeowner wants to sell, or if another qualified homebuyer is not immediately available (or if the ground lease must be terminated for other reasons), then the CLT may acquire the *fee interest in the improvements* from the homeowner-lessee and terminate the lease – whereupon the *fee interest in the land* and the *leasehold interest in the land* can be merged (once the seller's leasehold mortgage has been released). The CLT then becomes the fee simple owner of the entire property, so it can grant a conventional mortgage on the entire property if there is reason to do so.

In some cases a CLT may acquire the improvements from one homeowner with the intention of immediately reselling them to a new homebuyer, with whom the CLT will sign a new ground lease. In effect, this scenario combines the type of transaction described here with the type described in #1 above. In most cases, however, it will be simpler and more efficient for the CLT to assign its purchase option to the homebuyer rather than actually acquiring and reselling the property itself.

**CLT Transfer of Fee Interest in Land.** This type of transfer – through which a CLT would actually give up its title to land that has been leased to a homeowner – is strictly limited by virtually all CLT bylaws, and is regulated as well by the terms of virtually all CLT ground leases. Nonetheless, such transfers can happen in unusual circumstances. Two versions are possible.

1. *Transfer to a third party subject to an existing lease.* If the CLT transfers the *fee interest in the land* to a party other than the lessee (e.g., to another nonprofit land stewardship organization), the *leasehold interest* and (or including) the *fee interest in the improvements*, and any mortgage on the leasehold interest, remain unchanged. (Note: Section 3.3 of the Model Ground Lease provides that if the Lessor attempts to sell the fee interest in the land to any party other than a charitable or governmental entity, the Lessee shall have a right of first refusal to purchase it.)
2. *Transfer to the lessee-homeowner.* If the CLT transfers the *fee interest in land* to the lessee/homeowner, the *fee interest in the improvements* and the newly acquired *fee interest in the land* may be merged, subject to provisions in the lease and mortgage assuring that the mortgagee's interest will not be wiped out by such a merger.

**Transfer of the CLT's Interests and the Lessee's Interests to a Third Party.** For most CLTs in most circumstances, this possibility would be so remote as not to be worth mentioning. However, it can happen – and has happened – in circumstances where the CLT's *fee interest in the land* has been mortgaged along with the homeowner's *fee interest in the improvements*. If such a mortgage is foreclosed, the mortgagee can take possession of the *fee interest in the land* as well as the improvements and can merge the two interests, with the resulting termination of the leasehold interest.

### Concerns in Carrying out CLT Transactions

In carrying out any transaction involving a ground lease, a CLT has a fundamental concern with making sure that the three different kinds of property interests – fee interest in improvements, fee interest in land, and leasehold interest in land – are clearly distinguished

and clearly understood by all parties, and that the right interests are properly transferred to the right parties. In this section we will look at some of the more specific concerns that the CLT must attend to if it is to carry out its responsibilities in this regard.

**Orientation and counseling prior to sale.** Clearly the task of making sure that all parties understand the different property interests to be transferred in a transaction must begin well before the transaction actually takes place. The basic nature of CLT homeownership – what one does and does not buy when one buys a CLT home – should be emphasized in early efforts to acquaint prospective homebuyers with the homeownership opportunities offered by the CLT (see Chapter 21, “Marketing, Buyer-Assistance, Buyer Selection”). The fact that CLT homeownership is different from conventional homeownership should never be treated as a technicality that can be deferred until a later stage in the process. The nature of the deal is as important as the nature of the home and must be dealt with up front.

However, the fact that the basic nature of the deal must be clearly described up front does not mean that the matter can then be ignored from that time forward. The initial explanation of CLT homeownership on leased land will necessarily be a *summary* of something that is both unfamiliar and multi-faceted. It is important that this summary be broad and general enough so that it can be grasped with a reasonable degree of ease by people who are not already familiar with the concept. But even when there is an initial understanding of the concept, this understanding can fade and become confused as people learn more about the CLT and the opportunities it offers. CLT personnel should continue to listen carefully to what prospective homebuyers are saying, to make sure that they do understand the concept. At the same time there is a need to help prospective homebuyers develop a more detailed understanding of what they will be purchasing if they eventually sign a lengthy and rather complicated CLT ground lease. Clearly the task facing those who represent the CLT is a demanding one. It will take time to complete it. Enough time must be allowed so that it can be completed.

**Purchase and Sale Contracts.** The relationship between the seller and buyer of real estate is normally launched and defined by the signing of a purchase and sale contract between the two parties. The contract describes the property to be transferred and the price and other terms on which it is to be transferred. The contract obligates both parties to follow through with the transaction, on the terms described, provided that certain stated “contingencies” (such as approval of the necessary mortgage loan to the buyer) are met. Both parties therefore have a serious interest in making sure that the contract accurately describes what they are in fact prepared to do in carrying out the deal.

*When the CLT is selling the improvements.* With this type of transaction, it is obviously important that the contract make it clear that only the improvements are to be sold. But the contract should also go beyond this simple distinction. The nature of the ground lease, with its specific provisions, are an essential part of the deal. Therefore, the nature of the ground lease should be generally described in the contract, and the full text of the lease should be attached to the contract.

For example, the contract may state, following the description of the property’s location: “*The improvements only are to be sold, with the land to be leased through a renewable 99-year ground lease that includes, among other provisions, certain restrictions on the use,*”

*occupancy and resale of the improvements. A full copy of this ground lease is attached to and included in this contract by reference.”*

CLTs may also want to include among the contract’s contingencies a requirement that, within a certain number of days, the purchaser must present the CLT with a “letter of agreement” (also called “letter of stipulation”), signed by the prospective purchaser, and a letter of attorney’s acknowledgement (signed by an attorney) – as these documents are described in the ground lease (see Model Ground Lease, Article 1). Of course, the prospective buyer might best review the ground lease and consult with an attorney concerning its meaning *before* signing a purchase contract. The contingency suggested here will ensure that this important requirement will be met, if not before the signing of the contract, at least before the contract becomes binding.

*When a homeowner is selling the improvements.* All of these concerns relating to the terms of the purchase contract are important for the CLT not only when the CLT itself is transferring the fee interest in the improvements and the leasehold interest in the land but also when the improvements are being sold from one ground lessee to another. In this case, the CLT is a necessary party to the transaction because (1) it must determine whether the household in question is an eligible buyer and whether the terms of sale are permissible under the ground lease; (2) having approved the household, it will usually assign its purchase option to the buyer; and (3) it must then be prepared to issue a new lease to the buyer.

The CLT’s involvement in such transactions can be addressed in the purchase contract in either of two ways. What is probably the more common way involves a two-party contract between the buyer and seller of the improvements, with the steps that must be taken by the CLT spelled out among the contract’s contingencies. In other words, the buyer’s right to purchase will be contingent on the CLT giving the necessary approvals and (in most cases) assigning its purchase option – as well as being contingent on other conditions, such as loan approval. The other way of addressing the matter involves a three-party contract, with both the lessee and the CLT agreeing to transfer their separate interests in the property contingent upon the prospective buyer demonstrating income-eligibility (if it has not already been demonstrated), submitting acceptable letters of agreement (or “stipulation”) and attorney’s acknowledgement, etc. The three-party contract may be more appropriate in situations where the prospective buyer has been identified and pre-qualified through the CLT’s own efforts. The two-party contract may be more appropriate in situations where the prospective buyer has been identified through the seller’s efforts. (Note that, if a three-party contract is used, the CLT can agree to assign its purchase option as one of the interdependent conditions of the contract – in which case there may be no need for a separate assignment document.)

It should be noted that the prospective buyer normally makes a deposit against the purchase price when the contract is signed. If the prospective buyer then fails to complete the purchase on the agreed-upon terms, the deposit is normally forfeited (provided that all contingencies have been met). At least in the case of three-party contracts, there should be a clear understanding as to how a forfeited deposit is to be allocated between the CLT and the lessee-homeowner. Presumably the share to be received by each should depend to some degree on the costs that each is expected to incur (perhaps including additional housing costs incurred by a lessee who has to relocate while still making payments on the CLT home).

*Contracts for other types of transactions.* Transactions other than the two types discussed above may require that purchase and sale contracts be varied in other ways. For instance,

transactions involving CLT acquisition of land from a third party that is simultaneously selling the improvements to a homebuyer may require either *two* contracts (one between the third party and the homebuyer; another between the third party and the CLT) or a single *three-party* contract. In any case, what is important is that there be clear written agreement(s) as to who will transfer what to whom on what conditions.

### **Preparation for the Closing**

**The need for careful, timely preparation and review of documents.** Typically, a number of documents must be signed to accomplish all aspects of the closing. In preparing for the closing, the CLT and its attorney must make sure that all of these documents say what they are supposed to say. This may sound like an easy matter, but serious mistakes are easily made.

Consider, for instance, how easily a deed may be prepared that conveys *land and improvements* when the CLT's intention is to convey only the improvements. Like other legal documents, deeds are normally prepared with a word processor by modifying an electronic template as necessary for the particular transaction. Every law firm has such templates within its computer system. Routine documents are then typically prepared by legal assistants or legal secretaries who modify the appropriate template according to certain instructions. If these instructions are not fully communicated and understood, or if the person preparing a deed for a CLT transaction simply forgets to use the CLT version of the template, the result may be that a fee simple interest in the land as well as improvements will be inadvertently transferred. This is of course just one of many possible mistakes that are easily made and that can cause serious problems if not corrected.

Preventing such mistakes requires, first of all, that documents be prepared soon enough so that there will be adequate time for them to be reviewed by CLT personnel and other parties that have a direct interest in seeing that the documents say exactly what they are supposed to say. In any case, it is critical that documents be carefully checked, prior to the closing, by personnel who have a full understanding of the kind of CLT transaction that is to take place. It is ultimately the CLT's responsibility to see that the CLT approach to ownership is faithfully implemented through the transactions it carries out.

**Specific points to check *prior* to closing.** The following is a list of some of the more important *CLT-specific* points to check before it is time for the great flurry of document-signing that is the closing.

1. The deed for the improvements being sold to the homebuyer must contain an accurate description of the property being transferred, specifically limited to "improvements only."
2. The lessee-homebuyer's mortgage documents must contain an accurate description of the property being mortgaged, specifically limited to the improvements and the leasehold interest – or the leasehold interest *including* the improvements (or leasehold estate including improvements).
3. All other terms and provisions of mortgage documents – and the terms and conditions of any ground lease rider that the lender may require – must be read, understood and accepted by CLT personnel. The 2011 Model Lease stipulates that by signing a ground lease for the homebuyer, the CLT approves the mortgage loan with which the home is being purchased. If the CLT lease is based on an earlier version of the Model,



requiring the CLT's written approval of the mortgage (and if this written approval is not provided through the CLT's signing of a lease rider), then a separate approval document must be prepared and signed. (For more on this matter, see Model Lease, Article 8, and the accompanying commentary; also Chapter 20, "Financing CLT Homes.")

4. Any documents relating to deferred loans to the homebuyer (secured by subordinate mortgages on improvements and leasehold interest) must *not* provide for forgiveness of debt over time (assuming the CLT has reached agreement in principle on this matter with the funder). It should be noted that the conventional documents used by funders in making deferred loans to *non-CLT* homebuyers *do* often provide that the debt is to be forgiven over time. CLTs must make sure that such documents are modified for CLT transactions. (See Chapter 19, "Subsidy Structure," for more on this matter.)
5. The ground lease must be complete and accurate, with all necessary attachments. All information that is specific to the particular transaction – e.g., lessee's name and address and the description of the parcel being leased – must be accurately incorporated in the document.
6. A "memorandum of lease" (also called "notice of lease" or "short form lease") must also be complete and accurate, must be in a recordable form, and must be consistent with the requirements for this document as stated in the ground lease itself (see Model Ground Lease, Section 14.12).

### **At the Closing and Afterward**

**Preparation and oversight.** Closings may be overseen in either of two ways, depending on the state in which they take place. In some states it is the attorneys for the parties involved in the transaction (and/or those parties acting for themselves) who are responsible for making sure that all the necessary documents are properly drafted, signed and recorded. In other states, however, this responsibility is assumed by title companies.

When the closing is to be overseen by a title company, closing instructions must be prepared by a mutually agreeable party and delivered to the title company. In conventional real estate transactions, where the fee simple interest in the entire property is being transferred, the necessary instructions are relatively routine. It is often the homebuyer's mortgage lender that provides these conventional instructions, but the other parties may provide additional instructions to the title company when there is reason to do so. When a CLT closing is to be overseen by a title company, it is particularly important that CLT staff and/or the CLT's attorney either take an active role in the preparation of closing instructions or review them very carefully to make sure that the correct property interests are being described and/or mortgaged.

**Signatures.** A transaction is completed (closed) by the signing of documents. Some documents (e.g., board resolutions, letters of stipulation) are prerequisites for the transaction and can be signed at any time prior to the closing of the transaction. Other documents (e.g., deeds, ground leases, mortgages) must be signed at the time of the transaction, since it is the signing of them that effects the transfer of property interests. It is critical that all necessary documents be signed by the appropriate authorized people.

- Deeds must be signed by the designated representative of the party transferring the property (e.g., by the Board-authorized CLT representative if the CLT is selling the improvements to a homebuyer).
- Deeds must be signed by the designated representative of the party transferring the property (e.g., by the Board-authorized CLT representative if the CLT is selling the improvements to a homebuyer).
- Mortgages or deeds of trust are signed only by the mortgagors (borrowers), who are mortgaging property that they own or are in the process of acquiring. (Technically, they cannot mortgage the property until they do own it. In practice what is important is that the deed transferring title to the homebuyers be *recorded* before the mortgage or deed of trust on that property.) Mortgage riders must also be signed by the mortgagors. However, agreements in which mortgage lenders agree to special conditions, such as the requirements for a “standard permitted mortgage,” should be signed by the lender (and by the CLT and/or homebuyer if they, too, agree to conditions stated in the document).
- Ground leases must be signed by *both* the lessor and the lessee (the CLT and the homeowner ). Two originals should be signed, one to be held by each party. Ground lease riders must also be signed by both the lessor and the lessee.
- Recordable memorandums of lease must be signed by both lessor and lessee.

**Cash flow.** Money (monetary value in one form or another) comes to the closing from multiple sources and is divided and credited to multiple parties (potentially including attorneys, title company, the public office that records deeds, mortgages, etc., collectors of property taxes and transfer taxes, lenders that have provided loans to the CLT for acquisition and development or lenders that have provided mortgage loans to the selling homeowner, as well as the CLT itself). The arithmetic can be confusing for the unprepared. The CLT representative should be prepared with a complete record of how the money is to flow – and in particular how much, if any, is to flow to the CLT. At the closing, the CLT representative should make sure that the CLT does receive whatever amount is due it.

**“Document flow.”** Documents also originate with various parties and will become the property of various parties. The CLT representative should have a complete understanding of how the paper must flow from the closing. Signed deeds, mortgages and memorandums of leases are normally taken from the closing by either attorneys or the title company, who will have them recorded in the proper order and then returned to the proper parties. The CLT should normally be sure that it receives one of the signed original copies of the ground lease (the lessee should receive the other signed original), together with any riders or other agreements in which a party has agreed to provisions affecting the interests of the CLT. The CLT should also make sure that it has, for its records, accurate copies (not necessarily originals) of all other documents involved in or affecting the closing.

### **Sample Check List of Tasks in Preparing for and Completing CLT Transactions**

Not all tasks in this list will be necessary or appropriate for all transactions or in all jurisdictions, and some circumstances may call for additional tasks not listed here. Each CLT

should modify the list to address the requirements of its own types of transactions in its own jurisdiction.

- The appropriate parties sign a purchase and sale contract. Each party to the contract receives a signed original. Copies are made and distributed to the attorneys or title company that will oversee the closing. If the contract is signed prior to authorization of the transaction by the CLT Board, then the contract should state that the sale is contingent on such authorization.
- The CLT board passes any resolution required by its policies to authorize the transaction and authorizes one or more representatives to complete it. The CLT Secretary signs a copy of the resolution, certifying that it was duly adopted by the board. When the CLT itself is transferring the fee interest in the improvements and a leasehold interest in the land to a homebuyer, the resolution should authorize the transfer of both interests. When the CLT is not the seller of the improvements but is assigning its option to buy the improvements and is either agreeing to an assignment of the leasehold interest or is agreeing to sign a new lease, the resolution should authorize the specific actions intended.
- Closing documents, normally including the ground lease and deed to the improvements, are drafted, based on the contract.
- When the CLT is to assign its purchase option to a new homebuyer, a written assignment-of-purchase-option is prepared, unless the assignment is accomplished within a more comprehensive agreement (such as a three-party purchase and sale contract).
- The CLT circulates documents for review by the homebuyer and/or other participants in the transaction. These documents typically include the ground lease with exhibits and associated documents, any grant or deferred loan documents obligating the homebuyer, and any homeowner association documents.
- The homebuyer reviews documents and consults with her attorney. She may ask questions of the CLT regarding the documents. If she is satisfied, she gives letters of stipulation and acknowledgment to the CLT (within the required time period if a time limit is stated as a contingency in the purchase and sale contract).
- The CLT gets a copy of the homebuyer's loan application package and proposed mortgage or deed of trust documents from the lender or homebuyer. The CLT reviews mortgage terms to make sure that they are consistent with the CLT's policies.
- The CLT makes sure that household income information in the application package is consistent with the CLT's records and the requirements associated with any subsidies involved in the deal. The CLT also makes sure that, at the time of the scheduled closing, the income documentation will be as recent as is required by funders and mortgage lenders.
- The CLT gets a "certificate of corporate good standing" and/or any other certifications that are prerequisites for closing in the particular jurisdiction.

- Closing instructions are prepared by CLT attorney and/or staff, covering distribution of the sales proceeds, documents to be executed, and stating which documents are to be recorded after the closing.
- The CLT makes sure that all funds (from all sources) necessary to complete the closing are or will be available and can be transferred at the closing.
- At the closing, the CLT attorney and/or designated representative make sure that all necessary documents are properly executed, and all monies properly allocated.
- After the closing, the CLT makes sure that all necessary bookkeeping entries are made to account for all consequences of the transaction. These entries will relate not only to cash receipts or disbursements but to the acquisition or transfer of non-cash assets and the assumption or discharge of liabilities.
- The CLT makes sure that all necessary documents are received, after having been recorded, and that they are properly and securely filed.

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<sup>1</sup> In some contexts, the term “leasehold estate” is used to refer to the *combined* ownership of the leasehold interest in the land *and* the fee interest in the improvements (i.e., the combined property of the lessee), but this usage is not universal. In this chapter we avoid the use of the term “leasehold estate” and refer instead to the “leasehold interest in the land” and the “fee interest in the improvements” as separately identifiable ownership interests held by the CLT homeowner.