

Chapter 23

CLT Post-Purchase Stewardship

The CLT's post-purchase stewardship function is what distinguishes the CLT model from other affordable homeownership programs. A CLT may or may not build or rehabilitate housing. It may or may not have a major role in training prospective homebuyers and marketing homes. Of necessity, however, a CLT has an essential, ongoing, long-term stewardship role with regard to the owner-occupied homes on its land. Even if at some point it has ceased acquiring property, its commitment to stewarding previously acquired property should not waver. A CLT must be prepared to carry out an effective stewardship program on a truly perpetual basis. Needless to say, such a program, and the means by which it is to be funded even in the absence of other activities, must be carefully planned.

Basic Stewardship Goals and Necessary Activities

In its stewardship role a CLT has three basic goals:

- to preserve the affordability of its homes, for the intended income level, from one owner to the next – and to see that only income-eligible purchasers benefit from this affordability;
- to see that the owners of those homes are secure – that they are not displaced by foreclosure or other economic events;
- to see that the physical quality of those homes is preserved from one owner to the next.

Much of the time the CLT model is described primarily, if not solely, in terms of the first of these goals, the preservation of affordability, but, in reality, all three goals must be achieved if the CLT is to be a successful long-term steward. It is not enough to see that a home is sold for an affordable price if the low-income buyer lacks the training and support needed to succeed as a homeowner. Nor will an affordable resale price be a real accomplishment for the CLT if the physical quality of the home has deteriorated over time to the point where it is no longer a desirable place to live and its affordable price is no longer a bargain.

It is also true that much of the time the CLT's stewardship function is described primarily as a matter of *enforcing* the requirements and restrictions that are written into the CLT ground lease. Certainly the ultimate legal enforceability of the lease provisions is an important concern for CLTs, but, in practice, legal enforcement as such is a last resort. Most of the work of stewardship consists of the day-to-day, year-to-year activities that are necessary to see that the requirements and restrictions are willingly observed without resorting to legal compulsion. This chapter will focus on these ongoing activities. For discussion of the kinds of legal enforcement processes that may be required if all else fails, see Chapter 24, "Dealing with Worst Cases."

In general, day-to-day, year-to-year activities fall into the following four categories.

- *Disclosure*: making sure that homeowners are given all the information necessary to understand their obligations and opportunities as lessee-homeowners.

- *Monitoring*: making sure that the CLT has adequate information about the homeowner's compliance with obligations and about her success as a homeowner.
- *Support*: helping homeowners succeed, through training, direct assistance when possible, or through referrals to other sources of help.
- *Approval*: reviewing all situations where a homeowner wants to take actions for which CLT's approval is required, and deciding what is fair and appropriate.

We will review each of these categories in turn, but first let us emphasize something that is an important dimension of all of these activities: personal *engagement* between CLT and homeowners. All of these activities will be easier to accomplish, more effective, and possibly more economical, when carried out in situations where homeowners are actively involved with the organization and have positive relationships with staff and others in the organization. More than anything else, it is this kind of engagement that will prevent stewardship from becoming something that necessitates legal enforcement.

Disclosure

CLT homeowners must be fully informed about – and must fully understand – the special requirements and restrictions that distinguish CLT homeownership from traditional homeownership. The CLT must be sure both that homebuyers are fully informed before they purchase CLT homes and that their understanding remains clear and accurate and is not allowed to fade over time.

The subject of introducing prospective homebuyers to the CLT approach to ownership is addressed in Chapter 21, “Marketing, Buyer Assistance, Buyer Selection.” Chapter 22, “CLT Real Estate Transactions,” then addresses the process of making sure that those who do actually purchase CLT homes fully understand the nature of the ownership rights and obligations that they are acquiring. An important part of this process is the required “Letter of Agreement” (aka “Letter of Stipulation”) in which the homebuyer's understanding of the terms of the lease – and in particular the terms that limit her ownership rights – is summarized in non-technical language. The letter, referenced in Article 1 of the Model Lease, is signed by the homeowner and attached to the lease as an exhibit. Each new lessee-homeowner – including those who acquire the home and leasehold interest as heirs – must sign such a letter. Article 1 of the Model Lease also requires the attachment of a letter signed by the homebuyer's attorney (the “Letter of Attorney's Acknowledgement”) stating that the attorney has reviewed the terms of the lease with the homebuyer. Although full responsibility for disclosing all aspects of the “CLT ownership arrangement” rests with the CLT, it is important that homebuyers also receive an independent description of that arrangement from an attorney as an objective third party qualified to understand the terms of the ground lease.

The nature of CLT resale formulas, which limit the amount for which the homeowner is allowed to sell the home, involves particular disclosure concerns for the CLT. The formula can have major financial consequences for the homeowner, and some such formulas are relatively complicated in their details. Issues relating to the CLT homebuyer-homeowner's understanding of various specific resale formulas are discussed in Chapter 12, “Resale Formula Design.”

Important as it is for CLT homeowners to understand the exact nature of CLT ownership *before* they purchase a CLT home, there remains a need for *continuing* disclosure as well. The fact that a CLT homeowner focuses on and understands the terms and conditions of the CLT lease and related documents at the time of purchase does not mean that she or he will retain a clear understanding of these details years – and perhaps decades – after the time of purchase. The CLT will need to make sure that homeowners are reminded from time to time of the ways in which their rights and obligations differ from those of conventional homeowners. Like so many other aspects of CLT stewardship, this is more easily accomplished in the context of ongoing, positive, two-way communication between the individual and the organization.

In particular the CLT should establish a system for periodically reviewing and reporting to homeowners the effect of the resale formula on the potential resale price of each home. For some resale formulas (“fixed-rate” and “indexed” formulas) the CLT can simply apply the appropriate factor to the “base price” for each home to determine what the actual maximum price would be if the home were sold at that time. For “appraisal-based” formulas it is not possible to determine the actual maximum price without an appraisal, but CLTs that use appraisal-based formulas should still periodically remind homeowners of *how* the maximum price would be determined if they intended to sell at the time.

Finally, it should be emphasized that disclosure is important not only with those to whom the CLT initially sells a home but also with all those who may later acquire the home – including both those who may purchase the home directly from the preceding owner and those who may be heirs of the preceding owner. With both types of succeeding acquisition, the CLT will need to be sure that the prospective new owner understands the nature of CLT ownership, has signed a “letter of agreement” and has consulted with an attorney who has signed a “letter of attorney’s acknowledgement.”

Monitoring

By one means or another the CLT must keep itself adequately informed regarding certain aspects of the performance and status of its homeowners. It must know whether the homeowner is in compliance with the basic requirements established by the CLT Lease, by the homeowner’s mortgage, and by local laws and regulations. And, more generally, it should be aware of any problems in the homeowner’s life that may affect her security as a homeowner.

The means used by the CLT to monitor such matters may vary from one CLT program to another depending on the type of program and the character and geographical extent of the community that it serves, and, again, depending on the CLT’s relationship with the homeowner. For a CLT working in an urban neighborhood (or other relatively small area) with a limited number of homeowners, much of the monitoring that is needed may be a relatively simple matter of observing what is happening with particular homes in the neighborhood, listening to the owners of those homes, and perhaps also paying attention to what the CLT’s homeowner-members know about each other’s lives. On the other hand, for a CLT operating in a large geographical area with a large number of widely scattered homeowners, other means of monitoring – and other ways of promoting engagement with the homeowner – are likely to be more important, with the particular means depending on the aspect of performance being monitored.

We will review here the more important aspects of homeowner performance that should be monitored, and the means commonly used for monitoring each. Some of these aspects will be also be discussed below, under the heading of “Support,” in connection with the ways the CLT may be able to assist the homeowner in dealing with them. We will look first at aspects relating to financial circumstances, then at those relating to the occupancy, use, and physical condition of the homes, and finally those relating to transfers of ownership.

Monitoring financial activity. The CLT must be sure that the homeowner is paying those costs for which she is responsible. The CLT must also be sure that the homeowner does not take on additional financial commitments that may threaten either her financial security or the future affordability of the home for others.

Lease fee payments. The possibility that a homeowner may fail to make regular monthly lease fee payments is a significant concern not only because such failure deprives the CLT of revenue but also because it may be a first warning that the homeowner is struggling financially and because, in any case, it can lead to serious difficulties if not addressed soon enough. (The problem is even greater if the cost of taxes on the land is being passed on to the homeowner as part of the lease fee. In this case, if lease fees have not been paid when taxes are due, the CLT may have to advance the necessary funds while seeking eventually to collect from the homeowner.)

It is not difficult for a CLT to monitor lease fee payments (as long as the fee is to be paid directly to the CLT). However, if a CLT fails to deal clearly and decisively with violations of this basic financial obligation, some homeowners will develop the habit of repeated nonpayment, with the result that their debt to the CLT will continue to mount to the point where they are unable to pay it. At that point the CLT may have no alternative but to take legal action in order to collect what is owed to it (see Chapter 24 regarding methods of dealing in with this kind of “worst case”). Even if the CLT is eventually successful in collecting the debt, however, the situation will have taken on an adversarial character that will make the CLT’s role as steward more difficult on all fronts.

It is therefore important to deal with nonpayment promptly, methodically, and constructively. The method that will be followed should be disclosed to all and should be the same for all of the organization’s homeowners, month in and month out. The 2011 version of the model lease provides for interest to be charged on missed payments from the date the payment is due but also provides for interest to be waived if the payment is received within 30 days of the due date. With these provisions in place, the CLT should send a formal notice to anyone who has not made the payment in a specified number of days (e.g., 10 days) after the due date. The notice should remind the homeowner that the payment is due, and that interest is accruing and will be payable *if* the fee is not paid within the specified period, but it should also invite the homeowner to call and discuss the situation if for some reason she will not be able to make the payment within that time period. If the homeowner does not respond and does not pay before the 30-day period expires, another notice should be sent, showing the amount then due (the past month’s fee plus interest, plus the current month’s fee). If there is still no response, it is probably time for a proactive effort to contact the person, express concern about the situation, and offer to help find a solution if the homeowner is in fact experiencing financial difficulties (see “Support” below).

In any case it is important to continue to send monthly statements showing the total amount owed. If some arrangement has been made to defer or restructure the debt, that fact should be reflected in the statement. But the statements should still be sent regularly – the homeowner should never be given the impression that the CLT has forgotten or has decided that payment is not important after all.

Mortgage payments. A homeowner's failure to make mortgage payments can of course threaten both the homeowner's security and the CLT's long-term control of the affordability of the home. The question is: by what means can the CLT learn of this problem before it is too late. If possible, the CLT should get the mortgagee to agree to notify it in the event of nonpayment (see Chapter 20, "Financing CLT Homes"). However, even when such an agreement is in place, the mortgagee or servicer of the loan may not send a notice of default (either to the homeowner or the CLT) until the homeowner is so deeply in arrears that the problem may be too large to solve even with the CLT's help. The CLT is much more likely to be able to help if it is personally engaged with the homeowner in the kind of relationship that will result in the homeowner sharing the problem with the CLT when there is still enough time to work out a solution. All homeowners should know that the CLT *wants to know* if they are having trouble keeping up with mortgage payments and *wants to help* deal with the problem.

Tax payments. The homeowner's property taxes are often collected by the homeowner's mortgagee (or by the servicer of the loan) as part of regular monthly payments that also include principal, interest and insurance costs. The tax payments are escrowed and paid to the tax authority when the annual amount is due. As long as a CLT knows that taxes on *both land and improvements* are being handled in this way, there is no need for the CLT to monitor tax payments separately, but the monitoring of mortgage payment becomes all the more important in this case. See Chapter 13, "Establishing and Collecting Fees," regarding the different ways that CLTs have dealt with the payment of taxes on the land as distinct from taxes on the home (the improvements). See also Article 6 of the Model Lease together with the commentary on Article 6.

Payment of insurance premiums. Article 9 of the Model Lease obligates the homeowner to keep the home insured against loss or damage by fire, etc. and to maintain liability insurance covering the home and leased land. As in the case of property taxes, insurance costs are often collected in monthly increments by the mortgagee that has an obvious interest in seeing that insurance on the mortgaged property is continued without interruption. The CLT must be able to confirm that the full amount of coverage required by the lease is in fact being maintained in this way. If it is not being maintained in this way, the CLT must seek direct confirmation from the homeowner that the required premiums are paid (see commentary on Model Lease, Article 9).

New or additional mortgage financing. The refinancing of a CLT home (replacing an existing first mortgage with a new first mortgage on different terms and/or for a different principal amount) can provide important advantages for a CLT homeowner, but it can also entail serious risks for both the homeowner and the CLT. As is true of the homeowner's initial mortgage financing, any new or additional mortgage loans that the homeowner may want to secure must be approved by the CLT. The CLT's first concern, however, is to be sure that both the homeowner and the potential lender are aware of this requirement and will contact the CLT before proceeding to close any new loan. The requirement should of course be fully disclosed to the homebuyer prior to purchase, but,

as noted above in the discussion of disclosure issues, a homeowner's understanding of such a requirement is likely to become hazy over time and may not prevent her from moving forward on her own – particularly if loan products are being aggressively marketed to her by a lender who is less than diligent in researching the title to her home. It has been surprisingly common for such lenders not only to remain ignorant of the specific ground lease requirements regarding new or additional financing but to remain ignorant of the existence of the ground lease altogether. As with the monitoring of other activities, the best way for the CLT to be sure that it will be informed that new or additional financing is being considered is to maintain active communication with all homeowners and to remind them from time to time that the CLT must approve any new mortgage financing – and perhaps to suggest that if they are considering new or different financing the CLT may be able to help them arrange appropriate terms.

In those cases where new or additional mortgage loans are actually closed without the CLT's knowledge, the monitoring concern is a matter of discovering that this has happened so that the CLT can address the matter with the mortgagee. The CLT may eventually learn what has happened from the homeowner herself, but this is less likely in the case of programs where CLT homes are widely scattered and the CLT's engagement with homeowners is limited. In such case, a CLT may establish procedures for periodic review of the titles of all homes in its portfolio to determine whether additional mortgage liens have been filed.

Other liens. If a homeowner has allowed liens to be filed against the home by a tradesperson or other party whom the homeowner has failed to pay for work completed on the home – or perhaps for other services provided such as medical care – it is important for the CLT to know of the existence of the liens, which can affect the resale of the home in ways that can undermine both the homeowner's financial interests and the future affordability of the home. With knowledge of the situation, the CLT can take steps (or help the homeowner to take steps) to get the liens released. Section 7.4 of the Model Lease requires the homeowner to notify the CLT of liens that have not been released within 60 days of filing. The reality, however, is that the homeowner may not be aware that the liens have been filed, or may not understand the consequences of the filing. In this case, a periodic review of titles of all CLT homes, as noted above, may be the only form of monitoring that will give reasonable assurance that the liens will not go unnoticed until the home is eventually offered for resale.

Monitoring occupancy, use, and physical condition of the home. In some respects these tangible conditions are easier to monitor than the financial conditions discussed above, simply because they are more directly observable. In other respects, however they involve special problems. There are grey areas where the question of whether a homeowner is in compliance is a matter of interpretation. There are also sensitive areas where monitoring can be perceived as an invasion of the homeowner's privacy.

Occupancy. For any program designed to provide affordable homeownership opportunities on an ongoing basis, permanent occupancy of the home by the owner is a necessary requirement. Though permanent occupancy is defined differently by different CLTs (usually as occupancy for from 10 to 11 months of each year), it is required in one form or another by all CLT leases (see Section 4.4 of the Model Lease). If a CLT cannot confirm that an owner is in compliance with the requirement through everyday observation (e.g., observation that her children are regularly in the yard and her car

regularly in the driveway), then another method of monitoring occupancy may be necessary. Regular mailings to all homeowners is one method, though the fact that mail is not returned to the CLT from a homeowner's presumed address is not certain evidence that she is no longer residing there. It should be noted that occupancy by an owner's spouse or child (or other CLT-approved persons) constitutes occupancy by the owner under the terms of most CLT leases – a provision that may sometimes require the CLT to sort out who is who (and who is where) within a household in order to determine whether an owner is in compliance.

Subleasing practices. In situations where the CLT *has* approved extended non-occupancy (e.g., so the owner can pursue educational goals in another location for some period of time), the CLT's concern is likely to become a matter of approving and monitoring the terms on which the home is rented to others. See Section 4.5 of the 2011 Model Lease and the commentary on that section. An extended violation of the occupancy requirement is likely to be accompanied by unapproved subleasing. In fact, evidence of extended occupancy by people other than the owner may be the most apparent evidence of such a violation.

Permitted vs. non-permitted uses of leased land. Most CLT leases, following Section 4.1 of the Model Lease, limit use of the home and leased land to residential and related purposes – with permissible related activities usually defined by local zoning codes and other local ordinances. Compliance with such codes and ordinances – and the law in general – will normally be monitored more or less closely by local government(s), as well as by the CLT. For both CLT and local government, some use violations will be obvious (e.g., the front room converted to a liquor store, or maybe a goat tethered in the front yard), while others will be hard to observe and perhaps even harder to prove (e.g., drug trade or other illegal activity carried on inside the home). If the CLT suspects that illegal activity is going on behind closed doors, it may sometimes be able to deal with the situation by talking with members of the household and suggesting that they “clean up their act” before law enforcement officials need to be involved. If this approach is not appropriate and effective, then law enforcement officials may in fact need to be involved.

Physical maintenance of home. As we have emphasized, preservation of the physical quality of the home is an important aspect of CLT stewardship that in the past has often received too little attention. The process of seeing that maintenance problems are addressed is discussed below under the heading of “Support,” but before such problems can be corrected they must be identified. Some problems can of course be easily identified just by walking past the house and seeing, for instance, that the exterior paint is in bad shape. Other problems can be identified only through an interior inspection. Many, if not most, CLT leases follow the Model Lease in not giving the CLT a right to inspect the interiors of buildings without the homeowner's permission. The most effective inspections, however, will be those that are carried out *with* the homeowner and in connection with maintenance support services.

Alterations & additions. Substantial owner-initiated additions to or alterations of the home must be approved by the CLT (see Section 7.3 of the Model Lease) before work is done. If the homeowner does not seek approval, the CLT may still become aware that work is being done on the home. In this case, the CLT should first determine whether approval is or is not required, and then – regardless of whether approval is required –

should ensure that all work complies with lease requirements, building codes, and requirements of applicable insurance policies.

Damage or destruction. Homeowners should be encouraged to report any significant fire, water, or storm damage to homes when, or before, they contact their insurance company. In addition, the CLT should maintain a relationship with any insurance agency(s) providing coverage for the homes in its portfolio, and should be sure that the insurers are informed regarding the insurance-related provisions of the lease and that they are aware that the CLT will monitor the processing of claims. In any case, the CLT must see that damage is repaired and insurance proceeds are allocated in accordance with the terms of the lease (see Sections 9.4 & 9.5 of the Model).

Monitoring transfers of ownership. CLT leases prohibit any transfer of the home and the homeowner's leasehold interest in the land without the explicit consent of the CLT. The CLT's *first* monitoring concern is therefore a matter of being aware of all potential transfers before they happen. This is usually not a problem: potential transferees should normally *want* to have the CLT's consent, since, without it, they could not gain valid title to the property. The only exception would be people who are aware that they are not eligible transferees but are willing to risk discovery of this fact in order to gain possession of the home. In any case, the CLT's *second* monitoring concern with regard to transfers entails determining the *eligibility* of potential transferees.

Inheritance. Section 10.3 of Model Lease requires the executor of the estate of a deceased homeowner to notify the CLT within 90 days of the homeowner's death. If the CLT is already aware of the homeowner's death, it should not delay contacting the executor to determine who the heirs are and whether they want to occupy the home and are eligible to do so. The CLT should also make sure that the executor understands that under the terms of the lease (if it follows the Model Lease) an heir must either (1) be the spouse or child of the deceased owner or someone who has lived in the home for at least a year *or* (2) be income-qualified in the same way a purchaser of the home would be required to be. (It should be noted that subsidy sources often require the modification of the lease provisions regarding who is eligible to assume owner-occupancy of the home: see Chapter 19, "Subsidy Structure.")

Eligible heirs who *do* want to become homeowner-lessees must sign a "letter of agreement" (or "letter of stipulation") and provide a letter of attorney's acknowledgement, as required of all CLT homeowners. If there is *not* an heir who both wants to own the home and is eligible to do so, the home must be sold, in accordance with the CLT's resale provisions, with the seller's proceeds passed on to the heir(s) through the estate. The administration of an estate can involve a variety of complications that can easily take many months to work through. Determining the eligibility of heirs to assume ownership of a CLT home can add to these complications – particularly if the CLT must address questions such as, for instance, whether an heir has or has not lived in the home for at least a year. The CLT should deal with all questions thoroughly, but should not allow the process to drag on any longer than necessary – particularly if the home is sitting empty and subject to possible damage or deterioration.

Resale. The CLT's first concern in the case of resale is to be aware that the owner wants to sell, so that it can monitor any of the possible processes through which resale may happen (see Model Lease, Article 10 Sections 10.4 ff) and can ensure that the transfer complies with the requirements of the lease, whether the transfer involves

exercise of the CLT's purchase option or direct sale to a buyer whose eligibility is confirmed by the CLT. Normally the homeowner *will* notify the CLT of her intent to sell as required by the lease. If a homeowner were to try to sell the home without the CLT's knowledge, the effort would probably come to the CLT's attention when an attorney or title company representative acting on behalf of a potential buyer or potential mortgagee discovers that the home is subject to a CLT ground lease with terms that limit resale. As noted above, the only exception would be a direct sale – almost certainly for cash – to someone willing to take the risk of possessing a home to which he or she did not have clear title. Should this actually happen, it is almost inevitable that, sooner or later, it will come to the CLT's attention that an unauthorized party has taken possession of a CLT home. In such case the CLT's only recourse is likely to be legal enforcement of its rights with regard to the property (see Chapter 24, "Dealing with Worst Cases").

The possible roles of the CLT in overseeing the resale process, once notified of an intent to sell, are noted below in terms of the CLT's *support* for the homeowner (e.g. assistance with marketing and preparing the home for sale) and the CLT's *approval* responsibilities (e.g. approval of buyer eligibility and of the home's physical condition).

Support for Homeowners

At the heart of CLT stewardship is the support that CLTs provide to homeowners whose financial resources are limited and who have little or no prior experience in dealing with homeownership issues. This support may include training in certain areas, direct assistance in dealing with certain matters, and referrals to others that can provide specialized training or assistance when needed. The context in which these kinds of support will be most effective is one of personal engagement and trust between the CLT and its homeowners. The fact that a CLT has the *ability* to help its homeowners succeed will mean little if homeowners are not comfortable sharing their problems and accepting assistance or guidance from CLT personnel. A CLT that is seen by its homeowners primarily as a policeman who watches over them in order to enforce compliance with the terms of a complicated legal document will not be able to provide effective support. Nor will a CLT that is less threatening but is remote from its homeowners, with personnel who don't really know who the homeowners are and don't seem to care about their wellbeing.

Support regarding financial issues. Many of the financial monitoring issues discussed above relate directly to a homeowner's success in managing household finances. Failure to make lease fee payments or mortgage payments, failure to deal with tax or insurance obligations, failure to prevent liens from being filed against the home as a result of unpaid debts – all of these are indications either that household finances are being poorly managed or that the homeowner has suffered a financial setback that makes management particularly difficult. Whatever the cause, situations in which lower income homeowners are falling behind in meeting financial obligations are likely to get progressively worse if the homeowners are left to their own devices – or left to fall prey to predatory lenders offering financial "solutions" that will turn a potentially manageable problem into something completely unmanageable.

The first line of assistance that a CLT can provide is basic financial management training for all new homeowners, perhaps as a requirement for purchase, either by CLT staff or through other specialized programs to which homebuyers can be referred. More

specialized financial management – or credit management – training may also be offered to homeowners when there is an indication that it is needed.

In any case the CLT should engage with homeowners at the first signs of financial difficulty – before problems have snowballed – to determine the cause or causes of the problems. Has the homeowner yielded to the temptation to overuse available credit card credit, or to purchase a new car with a loan that has stretched her ability to meet total debt service obligations? Or have household expenses risen as a result of accident or illness within the household, or the need for major repairs within the home, or through efforts to help members of the homeowner’s extended family with crises in their own households, or as a result of increased tax assessments that jack up monthly housing costs? Or has household income been suddenly reduced by loss of a job, or unpaid maternity leave, or separation or divorce and/or the departure of another wage earner from the household?

Depending on the answers to these questions a CLT may be able to help in a variety of ways, including the following.

- Credit counseling, through the CLT or other agency, to help manage and restructure debt.
- Intercession to negotiate with creditors to restructure debt.
- Assistance in negotiating new property tax assessment with the local tax jurisdiction (see Chapter 17, “Property Tax Assessments”).
- Temporary reduction or waiver of lease fee, or development of alternative repayment schedule for accumulated debt to the CLT.
- Arranging or facilitating financing or refinancing from alternative sources (including the CLT itself, nonprofit loan programs, credit unions) on terms that are fair and affordable.
- Referrals to government programs that may help with home repair and other costs.
- Referrals to sources of appropriate, affordable legal assistance.

When a homeowner’s financial problems involve substantial arrearage on mortgage payments, the threat to the homeowner’s security – as well as the threat to the CLT’s ability to preserve the affordability of the home – is heightened. The CLT must work with the homeowner to determine whether it will be possible for her to catch up with payments and avoid formal default. If a formal notice of default has already been issued, the question will be whether the default can be cured within the period of time allowed for a cure. If the homeowner does not have the capacity to cure the default within the time allowed, the question will be whether the CLT is prepared to cure the default on the owner’s behalf (treating the payment as a loan to the homeowner, who should sign a note with an agreed-upon repayment schedule). Normally, a CLT should take this action only if it can be reasonably confident that the homeowner will be able to repay the loan while also keeping up with other ongoing debt service obligations.

If it does not appear possible for the homeowner either to cure the default or to repay a loan from the CLT while remaining current on other obligations, the CLT’s efforts should shift to helping the homeowner to avoid foreclosure and recover some equity by selling the home. If the home is in reasonably good condition and the CLT has a waiting list of qualified homebuyers, it should be possible to move expeditiously to sell the home in such a situation. If a little more time is needed to complete the transaction, the

mortgagee will have every reason to grant the additional time so that the mortgage debt can be paid from the proceeds of sale without the cost entailed by foreclosure. The homeowner must of course agree to sell the home in this situation – which some owners may not do, even though it is clearly in their interest. They may cling to the hope that somehow they will find the money to cure the default and so will resist the loss of their home to the bitter end. Or it may be that estranged co-owners will not agree to sell because they are having a hard time agreeing on *anything*. (It is possible, at least in some jurisdictions, for a CLT lease to treat a mortgage default as a default also under the terms of the lease and to treat a lease default as grounds for exercising the CLT’s purchase option – making it possible to sell the home even if the owners have not agree to sell; however most CLT leases do not provide for this.)

If foreclosure cannot be avoided, the CLT must then concern itself with regaining control of the home’s affordability by exercising an option to purchase following foreclosure – if it determines that this move would be cost-effective (see Chapter 20, “Financing CLT Homes”). If it cannot purchase the home for a workable price and if the resale restrictions are then removed from the lease, as would normally be the case, the CLT’s final concern will be to increase the lease fee charged to the new owner to a market rate ground rent (see Section 5.6 of the Model Lease).

Support regarding home maintenance, repairs, improvements. As we have said, preserving the physical quality of homes is an important, unavoidable stewardship concern for CLTs, and like other aspects of CLT stewardship it is a concern best addressed through homeowner-CLT partnerships based on trust. If a homeowner sees the CLT as a friendly source of advice and assistance, the CLT will almost certainly have opportunities to influence the physical condition of the home over time. If the homeowner sees the CLT as a stern inspector who comes around periodically to criticize the condition of the home, such opportunities will be limited at best.

Maintenance. Maintenance – as distinct from major repairs and improvements – is a matter of doing a number of small things when they need to be done to avoid the need for major efforts later on. Usually the cost of maintenance tasks is not a major factor, and usually a person does not need highly developed skills to complete these tasks successfully. Nonetheless, many of these tasks do require a certain amount of knowledge about how to deal with everyday physical issues in the home – tasks such as replacing filters in a heating or water system, fixing a leaky faucet or clearing a clogged trap in the sink drain. First-time homeowners will not necessarily have this knowledge. In fact they may not even be aware that there are filters that need to be replaced or that it may be quite possible to fix a leaky faucet or clear a sink drain without calling a plumber. Some CLTs have developed basic home maintenance trainings that have proven popular and useful. Some have also established “tool libraries” so that homeowners can borrow the tools they need to complete maintenance tasks.

As noted above in connection with monitoring, most CLT leases give the CLT a right to inspect only the leased land and the exteriors of buildings but not the interiors of homes without the owner’s permission. However, CLTs can provide an important service to homeowners by inspecting both the exteriors and the interiors of homes *with* the homeowners. They can then recommend maintenance and repair activities based on problems observed and what the homeowners have to say about the problems and what they have or have not been doing about the problems. This is yet another area where a

relatively close relationship between homeowners and CLT can greatly facilitate stewardship activities.

Repairs and replacements. It is inevitable that certain major repairs or replacements will eventually be needed in any home. Exterior surfaces will need to be repainted; deteriorated roofing will need to be replaced; major components of heating systems will need to be replaced; major appliances will need to be replaced. These are not needs that can be addressed simply by taking a wrench to a sink drain. These are needs where cost is a major factor. The amount of cost – perhaps measured in thousands of dollars – can easily exceed the financial capacity of lower income homeowners. The question of how such costs are to be covered is a major concern for CLTs, but one that, in the past, was often subordinated to an overriding concern with preserving affordability. Today, more CLTs are developing systematic ways of dealing with the long-term need for financing for major repairs, and it is highly recommended that all CLTs address the need directly.

The most direct approach to the matter entails a “repair reserve,” usually funded by an addition to or component of the monthly lease fee, so that, as elements of the home are being worn out or used up, money is being set aside regularly to cover the cost of their eventual repair or replacement. The question of how to structure and administer such a reserve, and how to establish guidelines for its use, involves a number of potentially complicated considerations. A CLT’s approach may depend in part on the age and type of housing the CLT is dealing with. A CLT that is developing new homes in new subdivisions may have reason to adopt policies different from those of a CLT that is doing scattered-site acquisition-rehab projects in older neighborhoods. (And a CLT that is working with condominium projects will be concerned with repair reserves primarily in terms of the condominium’s own *internal* reserve fund.) In any case, CLT experience with repair reserves remains somewhat limited at this time. The 2011 Model Lease includes provisions for a repair reserve (Section 7.6) and for a component of the monthly lease fee that is dedicated as a “repair reserve fee” (Section 5.1). But no model structure or model policies are provided. The various considerations involved in designing such a structure and such policies are discussed in the Commentary on Section 7.6 of the Model.

Another approach to funding major repairs is to make appropriate, affordable financing for home repairs available to homeowners – through a loan fund established within the CLT itself or perhaps through a home-repair loan program operated by a separate community development financial institution (CDFI). A solid working relationship with such a CDFI can be very helpful to a CLT and its homeowners in meeting this and other needs for capital.

Finally, regardless of its approach to funding major repairs, a CLT can provide important support to homeowners by maintaining lists of building trades people – plumbers, electricians, HVAC specialists, carpenters, roofers – who are known to provide objective, knowledgeable estimates and to do good work at reasonable rates. A CLT may save homeowners substantial costs – and may substantially improve the quality and durability of the homes – by helping homeowners to find the right contractors for replacement/repair projects (and by making sure that they avoid fly-by-night contractors who would exploit the inexperience of lower-income homeowners).

Improvements. CLTs have two kinds of stewardship concerns relating to improvements – by which we mean alterations or additions to a home that add capacity and value beyond what originally existed. The *first* concern is a matter of seeing that

improvements are appropriate for the site, comply with applicable codes, do not compromise the structural integrity of the house, are well constructed and durable and will have lasting value for succeeding owners (as opposed to just serving some specialized or idiosyncratic purpose of the present owner). As noted below, some improvements will require the CLT's prior approval. Others may not require approval, but the CLT still has the a basic stewardship interest in seeing that these improvements are appropriately designed and professionally executed. To the extent that the homeowner has a positive relationship with the CLT, it will be possible for improvements to be planned in partnership with the CLT and to benefit from the CLT's knowledge of development issues and local contractors.

The CLT's *second* stewardship concern relating to improvements is a matter of preserving the affordability of the home. This concern comes into play explicitly for CLTs using resale formulas that include the possibility of "capital improvement credits" for certain major improvements added by the homeowner (see Chapter 12, "Resale Formula Design"). With improvements for which capital improvement credits are to be awarded, the usual practice is to require pre-approval of both the design and the anticipated added value – as noted in the discussion of *approvals* below.

Approvals

In our review of monitoring and support issues, we have already noted a number of homeowner actions that require the written consent or approval of the CLT. In this section we provide a check list of those provisions of the Model Lease where approval is specifically required. The commentary on the specified sections of the Model can be consulted for more detail regarding the issues in question.

Occupancy and use

- *Extended non-occupancy* (Section 4.4). Approval is required for non-occupancy by the owner (or, in the owner's absence, by a spouse or child of the owner).
- *Subleasing* (Section 4.5). Permission is required for any sublease, and approval of the terms of the sublease is required – the goal being to ensure that the homeowner can recover her costs of ownership but cannot reap undue profits.
- *Uses not permitted by lease but permitted by then-current zoning* (Section 2.1). Approval is not specifically mentioned in this section, but a CLT may agree to permit certain uses not originally permitted by the lease if zoning ordinances permit them.
- *Removal of any part of home* from the leased land (Section 7.1). The basic stewardship principal that the value of the home should be preserved normally dictates that no part of the home should be removed. But exceptions may be approved in the case of improvements that owners have made themselves and want to take with them.
- *Alterations or additions* for which approval is required (Section 7.3). See discussion of support regarding improvements above.
- *Removal of minerals* from leased land (Section 2.2). Removal of minerals is generally prohibited, but a rural CLT might consent, for instance, to the removal of gravel from one part of the land for use on another part. (Also note that the

CLT itself is required to get the *homeowner's* consent to remove any minerals from the land.)

Financial Matters

- *Reduction or suspension of lease fee* to improve affordability (Section 5.4). Such approval is one of the actions that a CLT can take to help a homeowner deal with financial problems.
- *Use of repair reserve* to pay for particular repairs (Section 7.6) – depending on the existence of such a fund and the particular policies established for its use. See the commentary on Section 7.6 of the Model regarding the various possible approaches to the use of a repair reserve fund.
- *Reduction in insurance coverage* (Section 9.4). It's not likely that a homeowner would ask for or that a CLT would want to approve a reduction in coverage, but the homeowner cannot reduce the coverage *without* the CLT's approval.
- *Refinancing or additional mortgage financing* (Section 8.3). It is an important stewardship concern for the CLT to approve the amount, terms and resulting CLTV for any such financing.
- *Capital improvement credit* (if the resale formula stated in Article 10 includes such a credit). Pre-approval of proposed plans and potential amount of credit is normally required. Re-approval after completion of work is also normally required.

Transfers

- *Approval of heir(s)* as qualified transferees (Section 10.3). The process includes acceptance of a letter of agreement and a letter of attorney's acknowledgement.)
- *Approval of direct sale to income-qualified buyer* (if permitted as in Section 10.6 of Version 2 of Article 10). The process includes verification of income qualification and acceptance of letters of agreement and attorney's acknowledgement.
- *Permission for seller to pay cost of necessary repairs out of proceeds of sale* (if the Lease allows this practice, as in Section 10.13 or 10.14 depending on which version of Article 10 is used).
- *Approval of buyer's mortgage* (Section 8.2). Under the terms of the current version of this section of Article 8, the CLT registers its approval of the financing by signing the lease.

Covering Stewardship Costs

The range of stewardship activities described in this chapter – particularly the monitoring and support activities and all of the tasks involved in overseeing and facilitating resales – obviously entail substantial costs, year after year. Funding these activities, along with other aspects of CLT operation, is an abiding concern of all CLTs. Chapter 27, “Planning for Long-Term Sustainability,” provides a comprehensive discussion of the over-all challenge of funding ongoing CLT operations. Here we will summarize basic considerations involved in planning for the support of future stewardship activities – perhaps during periods of time when the CLT is no longer adding to its portfolio of homes and therefore cannot count on the kinds of external support that

can be generated by the *creation* of permanently affordable homes. A CLT in this situation will not have access to development fees. Nor is it likely to have access to the kind of private grant funding that is typically targeted to the creation and expansion of community-based organizations. And it cannot expect to have access to the kind of operating support that government entities may provide for programs that are actively expanding the supply of affordable housing. As a practical matter, a CLT in this situation will need to rely on “portfolio revenue” – primarily lease fees and transfer fees, since these sources are built into the stewardship program and do not call for the additional layer of effort required to solicit other forms of support.

Monthly lease fees. The monthly lease fee can be seen specifically as financial compensation for the CLT’s stewardship work (see Chapter 13, “Establishing and Collecting Fees”). Revenue from this source is limited by the necessity of keeping the monthly amount affordable; however, the monthly amount can be increased to the extent that a household’s other monthly housing costs – mortgage principal and interest, taxes and insurance – do not already demand all that the household can afford. In other words, the CLT can maximize the opportunity for lease fee revenue by doing what it can to limit the other monthly costs. These other costs depend in part on variables that are beyond a CLT’s control; nonetheless, there are certain ways that the CLT can influence them.

The CLT can limit the amount of mortgage debt that its homeowners must service by seeking deeper subsidies from public sources. Public subsidy sources are typically eager to get as many units as possible from the available funds, which means putting only as many dollars into each unit as is absolutely necessary to create affordability for the intended income level. CLTs – which are, themselves, typically eager to produce as many affordable units as possible – can be tempted to cooperate with the funder’s subsidy-stretching strategy by keeping their lease fees lower than is really in a CLT’s long-term interest. Generally CLTs should remind their subsidy sources – and themselves – that the work of preserving subsidies entails significant costs and that stretching the available funds too thinly over too many units may not be the best way to support permanent affordability.

CLTs can also expand the long-term opportunity for greater lease fee revenue by adopting pricing policies that create a reasonably wide window of affordability (so that prices are not just barely affordable for the income-qualified households). And CLTs can further expand opportunities for greater lease fee revenue by adopting resale formulas that will tend to increase the effect of the original subsidies and expand the window of affordability when homes are resold. (See Chapter 18, “Project Planning and Pricing.”)

Finally it should be noted that CLTs can influence the homeowner’s property taxes by advocating effectively for tax assessments that are limited to the as-restricted value of CLT property (see Chapter 17, “Property Tax Assessments”).

Transfer fees. These fees (sometimes called “lease renewal fees,” among other names) provide an opportunity to fund the sometimes substantial efforts that a CLT must make to see that transfers of ownership are consistent with the requirements of the lease and serve the long-term goal of preserving affordability for income-qualified owner-occupants. Section 10.12 or 10.13 of the Model Lease (the section number depending on which version of Article 10 is used) permits such a fee to be charged to the buyer, as an addition to the resale price paid to the seller. The amount of the fee is usually limited to a specified percentage of the price paid to the seller, and may be reduced from that level to

the extent necessary to preserve affordability for the buyer. The transfer fee is potentially an important source of revenue for the CLT as long as the resale price is affordable *enough* so that the fee can be assessed. Once again, it is in the CLT's interest to adopt policies regarding subsidy-allocation, pricing, and resale formula design that will result in resale prices affordable enough to allow collection of the fee.

Projecting stewardship costs and income. A CLT should, periodically, project what its annual operating costs would be in a time when its program consisted entirely of stewardship activities, assuming a given number of units (or several different hypothetical numbers of units). It should then project lease fee and likely transfer fee income based on those numbers of units. To project costs you will of course need to estimate the number of units for which a full-time staff people can cover the necessary stewardship activities. You will also need to address the practical complications that arise when you have just a little more work needing to be done than your one (or more) experienced full-time staff can handle. Projecting annual lease fee income is relatively simple (monthly fee x 12 x number of units minus projected uncollectable fees). Projecting transfer fee income for a specific time period is more difficult since it is impossible to predict when most people will sell their homes. Over the longer term, however, you can project *average* annual transfer fee income if you can establish the average number of years that people own their homes.

If your projections indicate that the organization will not have enough fee income to cover the necessary stewardship costs, you will obviously need to look for ways to increase fees (without compromising affordability), and/or ways to reduce expenses (without compromising stewardship), and/or cost-effective ways to supplement fee income with income from other sources (which, as we have noted, is not as easy for an organization in a holding (or "stasis") phase as for one in a growth phase). Needless to say, the best time to address a projected operating deficit for such a holding phase is earlier in the organization's history, when it is growing and can still make the kinds of policy adjustments discussed above to generate increased fee income for later years.

A note on economies of scale vs. economies of localization. It has been suggested that the per-unit cost of stewardship activities will be less for CLTs with large numbers of homes than for CLTs with fewer homes, in the same way that the per-unit cost of rental management is substantially less for large numbers of units than for smaller numbers. No doubt it is true that there are economies of scale for certain activities – e.g. systematic mailings to all homeowners, systematic searches of property records to identify new liens, etc. However, there are other kinds of economic advantages for those smaller CLTs whose holdings are more geographically concentrated, so that many monitoring and support activities can take place through direct observation and face to face consultation, thus reducing the need for systematic "long-distance" activities.