

Chapter 5-B

Model Classic CLT Bylaws Commentary

ARTICLE I: NAME AND PURPOSE

1. **Name.** The corporate name should be stated in the bylaws exactly – to the letter – as it appears in the articles of incorporation. If the names are not the same in the two documents, the IRS may require amendment of the bylaws to conform with the articles before tax-exempt status is recognized (even if the problem is only that the abbreviation *Inc.* appears in one document but not the other).
2. **Purpose.** A statement of purpose need not appear in the bylaws, as it must in the articles of incorporation. Nonetheless, it is practical to include the corporate purposes in the bylaws so that readers will not need to refer to a separate document to find a statement of the purposes that the bylaws are concerned with carrying out.

ARTICLE II: MEMBERSHIP

1. Regular Membership.

- a. *Lessee Members:* The language of this paragraph is intended to include tenants in buildings on CLT land, and people who are resident-members of co-ops or condominium associations that lease land from the CLT, as well as those who own individual homes on land leased from the CLT. Some CLTs may prefer to use the term “Residents” rather than “Lessees” – particularly those CLTs dealing with condominium units where the land is not leased from the CLT (in which case the paragraph should be revised to eliminate ground leasing as a necessary aspect of the definition). CLTs that deal only with single-family homeownership can use the term “Homeowners.”

Note that these Bylaws provide automatic membership for all who qualify as Lessee Members. Thus Lessee Members do not need to pay dues or meet the other requirements for General Membership. This approach is consistent with the Model Ground Lease, (Section 15.1), which states that, “The Homeowner under this Lease shall automatically be a regular voting member of the CLT.” If a CLT chooses *not* to exempt lessees from the general membership requirements, it should make sure that its ground lease does not bestow automatic membership on all lessees.

- b. *General Members:* Some CLTs limit General Membership to the residents of a specified geographical area. Others have not done so because they found it difficult to agree on the absolute boundaries of their geographical community, and because they felt the question of whether people identify with the community was more important than the question of whether they live on one side or the other of a specific boundary. CLTs that do limit general membership to residents of a specific area can still allow residents of other areas to become “supporting members” (see Section 5 of this Article).

(1) Earlier versions of the Model Bylaws required prospective members to attend an “orientation meeting” as well as submit a signed statement of support; however, most CLTs have seen this as an overly specific requirement.

2. **Requirements for Continuing Regular Membership.** Basic requirements for continuing membership are important not only as a means of encouraging active member

participation but as a clear basis for “cleaning the membership rolls” annually (removing the names of those who are no longer active members), so that it will not be unduly difficult to attain a quorum at membership meetings. Earlier versions of the Model Bylaws included attendance at a certain number of membership meetings as a requirement for continuing membership. However, most CLTs require only the annual payment of dues and do not try to record and apply attendance information in this way.

3. **Membership Dues.** Some CLT bylaws assign the power to assess dues to the board of directors. It is also possible to specify in the bylaws that dues shall be a particular dollar amount. This approach is appropriate if you intend to limit dues to a nominal sum (e.g., \$1/year), in which case there may be no need to provide for the alternative of payment through the contribution of labor. In any case, it is important to assure that a requirement of a substantial cash payment does not become a barrier to membership for low-income people.

The calendar year is established here as the simplest basis for annual dues. Another practical approach, however, is to apply dues to the period of time running from one Annual Meeting to the next – so that it is clear that all those who have paid dues during this time will be eligible to vote at the Annual Meeting that concludes the period.

4. **Rights of Regular Members.**

- b. The requirement that the membership assent to the major actions listed in this subparagraph gives the members the kind of real power that distinguishes true membership organizations from organizations that are “board-controlled.” Such requirements will of course make it more time-consuming and cumbersome to accomplish the major actions in question. There are good reasons for not allowing such actions to be taken lightly, but CLTs establishing these requirements should be clear about the consequences of the process that they are committing the organization to.

5. **Supporting Membership.** This separate, non-voting membership class is not a necessary feature of the CLT, but it can be helpful in encouraging support from people who are sympathetic with the CLT’s goals but live outside of the immediate geographical area or simply do not wish to attend meetings and vote. By establishing a supporting membership, a CLT can demonstrate broader public support and increase its revenue from dues (which may facilitate financial support from other sources), while assuring that control of the organization will remain with those most directly affected by its actions and most actively involved in its operation.

6. **Membership Meetings**

- a. *Notice.* Adequate notice of meetings is essential, but notice requirements must be realistic. (They must also be consistent with state not-for-profit corporation law.) A period of notice greater than one week may be desirable, but can be difficult to implement for officers and staff. It is possible to require a greater period of notice for certain types of meetings or for certain types of decisions, but such distinctions can be difficult to remember, and may therefore be followed less consistently. These Model Bylaws require a greater period of notice for meetings in which action is to be taken regarding dissolution of the Corporation, and a shorter period for emergency board meetings. Otherwise the Model establishes the simple requirement that notice

be mailed at least one week before all membership and board meetings.

- b. *Annual Membership Meetings.* It is wise to establish a regular pattern of annual meetings by specifying the time of year when they will take place. (When a time of year is not clearly established, busy new organizations sometimes let too much time slip by between annual meetings.) The time of year that you choose for regular annual meetings may be influenced by the timing of your first annual meeting, but you should also consider the question of when it will be most practical to seat new directors (perhaps at the beginning of the fiscal year, as a new budget goes into effect), and the question of whether the annual meeting will coincide with the presentation of the annual report.
- c-f. These are conventional provisions that should be practical for most CLTs but that can be modified if there is reason to do so.
- g. *Quorum.* The quorum is an important issue, and one in which the principle of requiring extensive member participation must be balanced against a degree of realism. If the quorum is set too low, you may not be asking enough of your members. If it is set too high, it can be difficult to gather the number of people necessary for a duly constituted meeting (without which no action can be taken legally). Generally CLTs that have developed extensive regular (i.e., voting) memberships have established very low quorums (sometimes 10% or less) for membership meetings. CLTs that have limited their regular membership to a core group of directly involved and active members (perhaps enrolling others as supporting members) have generally established higher quorums. (In any case, make sure that the quorum you establish is consistent with the not-for-profit corporation law of your state.) Some CLTs may choose to require a larger quorum for decisions on certain important issues. These model bylaws require a higher percentage vote for action on certain issues but do not require a larger quorum.
- h. *Decision-making.* This paragraph is intended to provide a practical compromise between consensus decision-making (which is difficult with a diverse group that may meet only once a year) and strict adherence to Robert's Rules of Order.
- * **Possible Provision for Removal of Members.** It is possible for CLT bylaws to provide for the suspension or termination of membership in cases where a member has acted "in a manner seriously detrimental to the Corporation." Though these model bylaws provide for the removal of *directors*, they do not provide for the removal of members. The assumption here is that no one is likely to do as much harm by virtue of being a member as may be done by a divisive effort to terminate membership.

ARTICLE III: BOARD OF DIRECTORS

1. **Number of Directors.** To accommodate the three-part board structure that is an established feature of classic CLT governance, the usual practice is to specify a number of directors that is divisible by three. Nine-person, twelve-person, and fifteen-person boards are reasonable, depending on the size of the organization and the number of qualified candidates available. Boards with less than nine persons concentrate great responsibility in a very small group and may lack stability and continuity as directors are

replaced. Boards with more than 15 members may be cumbersome. It is not recommended that a CLT's bylaws allow the size of the board to vary (e.g., "not less than 9 nor more than 15 directors") unless careful provisions are included to assure continued balance among the three categories of directors.

2. **Composition of the Board.** Some CLTs, while preserving the three basic board categories of the "classic" CLT, have specified subsets of representatives within these categories. For example, within the "Lessee" category, a CLT may set aside one or more seats for lessees in rental housing or lessees in co-ops or lessees occupying commercial space on the CLT's land. Within the "Public" category, a CLT may set aside one or more seats for representatives from government or representatives from the financial industry or representatives from local religious or service organizations. It should be noted that the term "Public Representative," as used here, is not intended to be synonymous with the term "governmental representative." It is the public *interest* that is being represented by these members of the CLT's Board of Directors, not necessarily the "public sector." Government officials are in fact found in the "Public Representative" category on many CLT Boards, but it is rare for a CLT to reserve more than one or two of its "Public Representative" seats for representatives from the public sector.

3. **Nomination of Directors.**

a-b. *Lessee and General Representatives.* These rather complicated provisions are intended to cover both new CLTs, which may have no lessee members, and established CLTs, which may have many lessee members as well as many general members. Note that, since nominations are to be made at least ten days prior to the annual meeting and written notice is to be mailed at least one week prior to all membership meetings, three days are allowed for the preparation of the list of nominees.

* CLTs with lessees living in co-ops, condominiums, or other homeowner associations may wish to assign a role to these entities in nominating directors – allowing each entity to nominate a designated number of candidates in the Lessee Representative category.

c. *Public Representatives.* Some CLTs may wish to provide further guidance regarding the nomination of "public representatives." For instance: "In making such nominations, the Board shall endeavor to identify willing candidates who are associated with other nonprofit organizations or public agencies concerned with land and housing issues in the Hometown region, or who are associated with other community land trusts or with the community land trust movement, or who, for other reasons, are in position to help the Corporation to function effectively in the larger community." Alternatively, some CLTs may have reasons for requiring specific representation of certain institutions or agencies.

4. **Election of Directors.**

b-c. *Voter eligibility re election of Lessee and General Representatives.* An early version of these Model Bylaws allowed all regular members – Lessee Members and General Members collectively – to vote for (but not to nominate) both Lessee Representatives and General Representatives. The present version of the Model

adopts the different approach taken by certain CLTs – providing for the election of Lessee Representatives by Lessee Members only, and General Representatives by General Members only. This approach has been adopted so that the model will reflect the “purest” form of representation, with each of the constituencies within the membership having the right to choose its own representatives. It should be noted, however, that some CLTs have felt this approach places *too much* emphasis on the differing interests of lessees and general members, particularly for a new CLT with a small membership.

- * CLTs that have lessees in co-ops, condominiums, or other homeowners’ associations may choose to prohibit the election of more than a designated number of Lessee Representatives from a single such organization or association. Any CLT may choose to prohibit the election of more than one Lessee Representative from a single household.
 - e. *Only a plurality is required for the election of Directors.* It is possible for bylaws to require that directors be elected by a majority vote, with provisions for additional ballots when positions are not filled by candidates receiving a majority on the first ballot. The approach taken here simplifies the process, but some CLTs may prefer the more rigorous approach, requiring a majority vote.
- 5. Vacancies.** Provisions for filling vacancies on the Board of Directors are particularly important when the Board consists of only nine people.
- a. *Election to Fill Vacancies.* Note that this paragraph calls for a majority of the *remaining* directors, not for a majority of those present and voting. Thus, if eight directors remain, an affirmative vote by five of them would be necessary, regardless of how many directors were present at the meeting.
 - b. *Qualifications of Replacements.* This requirement could be made more specific: that replacements for lessee representatives be elected from among the lessee members, and that replacements for general representatives be elected from among the general members. However, for a new CLT, with a small membership and few lessees, such a requirement may limit the choice too much.
 - c. *Term of Replacements.* An early version of these Model Bylaws provided for a replacement director to serve only until the next membership meeting, at which time the position would be filled through the regular electoral process. The present version allows the replacement to serve out the full term of the director who has been replaced – which makes it easier for the CLT to maintain the staggered terms described in paragraph 7-a.
- 6. Low-Income Representation.** This section has been added to the Revised Model Bylaws in response to the federal requirements for certification as a “Community Housing Development Organization” (CHDO) – as explained in Chapter 4, “CLT Bylaws Considerations.”
- 7. Terms of Directors.**
- a. *Terms of First Elected Directors.* This procedure for staggering terms of directors assumes twelve directors, with a regular term of two years.
 - b. *Terms of Successor Directors.* A two-year term is practical when the board consists

of twelve directors divided into three categories, as provided in these bylaws. Given such a board, with terms staggered as provided in paragraph a, there will be a smooth turnover of board members, with two directors elected in each category each year. If the board is to consist of nine directors, it is practical to establish three-year terms, so that one director is elected in each category each year. Three-year terms are also recommended for fifteen-person boards, so that five seats are filled each year, though the number in each category will differ from year to year. One-year terms are not recommended, because a certain amount of time is needed for new directors to become familiar with the working of the organization, and because it is important to have continuity within the board from year to year.

- d. *Re-election.* The number of terms allowed may depend in part on the length of term. Though this limitation on length of service may sometimes force an established leader to leave the board before some would wish, it is generally wise to set such limits to ensure that “new blood” is brought into the board at regular intervals.

8. Resignation.

- b. *De facto resignation.* This paragraph is intended to provide a relatively “automatic” mechanism for replacing directors who have repeatedly failed to attend meetings. You may wish to set a different number of consecutive meetings that may be missed before this provision takes effect, depending on the frequency of regular board meetings. Or you may stipulate that such a provision will take effect if a director misses more than a certain percentage of the regular meetings in a certain period of time (e.g. 50% in one year). In any case, regular participation by all directors is important, and there should be a relatively simple procedure for replacing those who do not participate regularly.

Note that the President is assigned the responsibility of notifying the absent director. Responsibility for giving notice is more conventionally assigned to the Secretary, but, since the make-up of the Board itself is at stake, it seems appropriate to assign this specific responsibility to the President.

9. **Removal of Directors.** The removal of a director on the grounds described in this section should be clearly distinguished from the “automatic resignation” described in the previous section. To remove a director because he or she is “judged to have acted in a manner seriously detrimental to the Corporation” is obviously a very serious matter, to be undertaken only in extreme circumstances. The bylaws of many organizations provide only generally for the removal of directors for good cause, without specifying the detailed procedures included here. However, because the removal of a director is potentially a seriously divisive process for the organization, it is wise to create a carefully structured process to assure consideration of all points of view and to discourage precipitous decisions. In case such a situation ever does arise, the bylaws should provide clear guidance.

10. Meetings of the Board of Directors.

- a. *Notice of meetings.* Check your state not-for-profit corporation law regarding notice requirements.
- b. *Waiver of notice.* This provision is not intended to allow board meetings to be called on short notice. Provision is made for emergency meetings for that purpose in

paragraph e. The intent here is only to provide for situations in which there is an inadvertent failure to give proper notice to all directors.

- c. *Annual meeting.* In allowing six weeks to pass between the Annual Membership Meeting and the Annual Board Meeting, the intent is to avoid scheduling problems. An even longer period might be allowed, but each new board should elect officers as soon as possible after the annual membership meeting at which new directors are elected.
- d. *Regular meetings.* Some boards meet less frequently than is here required, though they often have executive committees that meet more frequently. Our assumption is that a CLT should have a working board and that a working board for an active CLT will need to meet quite frequently. In practice, it is common for CLT boards to meet monthly, and some require monthly meetings in their bylaws.
- e. *Special and emergency meetings.* Provision for emergency board meetings can be especially important for a CLT – for instance when there is a need to act quickly to take advantage of a short-lived opportunity to acquire real estate.

11. Procedures for Meetings of the Board of Directors.

- b. *Executive sessions.* Though open meetings should be the norm, a CLT board will occasionally need to discuss matters that should not be discussed in public, either because individuals would be harmed by such discussion or because the CLT itself would be harmed. Any board must exercise reasonable judgment in deciding when to go into executive session for the purpose of discussing such matters, but the bylaws can provide useful guidance and can help to ensure that the openness of board meetings is not compromised by inappropriate executive sessions. Note that, with one exception, executive sessions are to be held only for the purpose of discussion; any binding action regarding the subject discussed should be taken in open session following the executive session. The one exception involves decisions regarding real estate purchase options or contracts. The reason for *allowing* executive session decisions in this case is that public knowledge of an impending purchase may interfere with the successful completion of the purchase on favorable terms, or may interfere with the successful completion of other purchases.

(1-5) Note that the board is not required to go into executive session to discuss any of the matters listed; it is permitted to do so, and permission is limited to *only* those matters listed.

- c. There may be reasons for establishing a quorum of more than a simple majority for the transaction of certain kinds of business. However, as in the case of notice requirements, quorum requirements that involve too many distinctions will be difficult to remember and may be less consistently observed.
- e. As written, this paragraph is intended both to allow for the appointment of a “temporary secretary” to record minutes in the absence of the Secretary and to allow for the designation of a person other than the Secretary (e.g., a staff person) to be the regular recorder of minutes at all meetings. In the latter case, the Secretary retains the responsibility for assuring that minutes are properly recorded.

12. Duties of the Board.

- a. *Annual report.* The requirements for the Annual Report are intended to ensure both that the Board will review the CLT's activities each year and develop a basic plan for the coming year, and that these matters will be communicated to the membership.
- b. *Operating budget.* The process of developing an annual operating budget is essential to effective planning and financial oversight. Regular adoption of an annual operating budget should be considered a duty and priority of the Board. (Capital budgets for the acquisition and development of real estate are normally treated separately, with commitments made project by project rather than fiscal year by fiscal year.)
- e. *Personnel policy.* It is assumed here that the CLT's personnel policy will spell out the role of the Board in relation to an executive director and other staff positions. However, some CLT bylaws deal specifically with the board's responsibility for hiring, overseeing and firing an executive director.
- f. *Deposit of funds.* Article IX requires that all funds not otherwise employed be deposited in "reliable depositories" to be determined by the Board. It is a basic duty of the Board to decide what account(s) will be opened for this purpose, with what institution(s). In fact, banks normally require Board resolutions authorizing the opening of an account.
- g. *Signing of deeds, etc.* It is possible for the bylaws to assign to specific officers the duty of signing certain kinds of instruments on behalf of the Corporation (when the Board has authorized the transaction in question). However it is generally more practical to allow the Board of Directors to decide who may sign what, as it develops specific procedures for operating the organization and approves specific transactions. See Article IX regarding the signing of checks and the authorization of loans and contracts.
- h-k. *Stewardship responsibilities.* These more general duties are essentially related to the Board's basic responsibility of carrying out the stewardship purposes of the Corporation. They are listed in this section as duties (rather than in the next section as powers) to emphasize the Board's responsibility for actively pursuing the CLT's purposes, and to emphasize that these activities must be carried out in accordance with the essential features of the CLT model defined in Articles V and VI.

13. Powers of the Board of Directors.

- a. *Retaining Advisers.* This provision allows maximum latitude to the Board in deciding who should be appointed or retained, when, for how long, and for what purposes. Bylaws may be more specific regarding the appointment of legal counsel and auditor – both of which are very important for CLTs.
- b. *Committees.* Bylaws may provide for the creation of specific standing committees, but no assumptions have been made here about what committees should be established by a particular CLT. New CLTs have a very wide range of concerns: the development of a strong membership, outreach to other organizations, research regarding ownership patterns and acquisition opportunities, legal research, development of leasing policies and a resale formula, development of resident

selection policies, fundraising, and more. Some basic tasks and oversight responsibilities relating to these concerns should normally be assigned to committees, but the number of committees and the grouping of assigned responsibilities must depend on the number of people available for active committee service.

- d. *Borrowing and lending.* The Board's power to borrow is normally essential to the acquisition and development of property. The power to lend is important for certain CLT programs, such as the operation of a loan fund for lessee's home repairs. See Article IX regarding the Board's responsibilities in contracting loans.

14. Limitations on the Powers of the Board of Directors. The limitations listed here are described elsewhere in the bylaws, as follows: dues (II-3); removal of Directors (III-8); sale of land (V-3); resale formula (VI-3-5); amendment (VII); and dissolution (VIII).

ARTICLE IV: OFFICERS

1. **Designation.** The President is sometimes identified as the "Chair" or the "Chairperson." The Secretary is sometimes identified as the "Clerk."
4. **Removal from Office.** Unlike the process for removing a Director from the Board, the process for removing an officer from his or her specific office should be relatively simple. An effective Board must have officers who carry out their duties consistently. A Board may have good reason to replace a President, for instance, who does not attend meetings regularly and is frequently unavailable to carry out other duties. Without removing such people from their Board seats, it should be possible to replace them as officers.
5. **Duties of the President.** Most of the duties listed in this section are either conventional duties of the President or are specifically assigned elsewhere in the Bylaws.
 - c. *Meeting agendas.* These Bylaws require that an agenda be included in the notice of all meetings (II-6-a and III-9-a). It is the Secretary's duty to see that proper notice is given of all meetings, but it is appropriate to require the President to see that an agenda is made available for inclusion in the notice, and therefore to hold the President responsible, with the Secretary, for seeing that the agenda is properly distributed as a part of the notice.
6. **Duties of the Vice President.**
 - b. *Duties re. disqualified President.* This paragraph refers to a situation (possible action to remove the President from the Board of Directors) that most CLTs will never face. Since the possible duties of the Vice President in this unlikely situation are specified elsewhere in the Bylaws, this paragraph might be omitted.
 - c-d. *Duties re. bylaws and committees.* The Vice President, whose responsibilities are otherwise quite limited, is given some of the special responsibilities of "parliamentarian" and "whip." The tasks involved – assuring compliance with the bylaws and proper functioning of the committees – are important and can be neglected when no one officer is charged with carrying them out.
7. **Duties of the Secretary.** Some bylaws (if read literally, as bylaws generally should be) assign to the Secretary immediate responsibility for carrying out duties relating to

membership records, notice of meetings, and minutes of meetings (e.g., “The Secretary shall give notice...”). Here responsibility is assigned for *oversight* of these matters, so that it will be clear that the actual tasks involved may be performed by staff or volunteers, when the Secretary and/or the Board choose to make such arrangements. Regarding the recording of minutes, the Board is specifically authorized (in III-11-e) to designate a person other than the Secretary to record minutes under the supervision of the Secretary.

- 8. Duties of the Treasurer.** For an organization that will accumulate substantial assets and engage in transactions involving substantial sums of money, the office of Treasurer is particularly important – and will require the commitment of a certain amount of time by this officer. The essential responsibility of the Treasurer is one of oversight. Treasurers of some smaller organizations may perform specific tasks such as reconciling checking accounts and preparing financial reports. In larger organizations, such tasks will normally be performed by staff and/or by an accountant, but the Treasurer retains responsibility for seeing that they are properly performed.
- a. *Accounting.* It is desirable – but not always necessary – that a Treasurer bring to the office a basic knowledge of accounting practices. What is most important is that the Treasurer be able and willing to work with staff and/or accountant to develop an understanding of the organization’s financial records.
 - b. *Banking.* The Board is responsible for determining what depository accounts should be opened. The Treasurer is responsible for seeing that funds are deposited in these accounts when and as appropriate.
 - c. *Documents.* It is essential that a CLT have an effective system for preserving these documents against fire, theft, and carelessness. One of the duties of the Treasurer is to see that such a system is implemented.
 - d. *Collection.* As stated, this is another basic oversight responsibility, not a requirement that the Treasurer be the immediate collector or recipient.
 - e. *Disbursement.* Bylaws may specify that the Treasurer shall sign all checks written on the Corporation’s accounts. If the question of who is to be authorized as a signatory is left to the Board, as in these bylaws, the Treasurer is still responsible for seeing that disbursements are made only as the Board has directed.
 - f. *Financial reports.* These reports may be prepared by staff or an accountant, but it is critically important that the Treasurer understand them and be able to explain them to the Board.
 - g. *Government reports.* These may be prepared by staff and/or accountant, but the Treasurer is assigned the responsibility for seeing that they are prepared and submitted when and as required.
 - h. *Budgets.* Budgets will normally be prepared by staff and/or a committee, but the Treasurer is again assigned the responsibility for seeing that the job is properly done at the proper time.

ARTICLE V: CONFLICT OF INTEREST POLICY

Conflict of interest is obviously an important issue for an organization that will affect the

financial interests of many people. All CLTs should adopt conflict of interest policies, either as part of their bylaws or as separately adopted policies. (In the latter case, CLTs may want to include in Article III of their bylaws the requirement that the board adopt such a policy).

Previous versions of these Model Bylaws contained a basic, brief policy statement regarding conflict of interest for board members at the end of Article III. In the current version, in order to provide more specific guidance regarding procedures for dealing with potential and actual conflicts of interest, the policy statement has been expanded in the form of this separate Article V.

A different sample policy is offered by the IRS in Appendix A of the Instructions for Form 1023. (Form 1023 is required for applications for recognition of tax-exempt status under section 501(c)(3), and is available, together with the Instructions, online.) The IRS sample is a good deal more detailed than the one offered here. It is also more focused on *financial* interests and does not address questions of non-financial interests or apparent conflicts as this Article V does. Applicants for recognition of 501(c)(3) exempt status are not required to adopt a policy based closely on the IRS sample. We recommend the shorter and more broadly applicable policy presented here, but we also recommend that new organizations review the IRS sample before they adopt a policy.

Generally people should not be discouraged from serving on a CLT Board for fear of a conflict of interest on some matter that may come before the Board. The question is not whether they should serve on the Board, but whether they should participate in making decisions on matters in which they may have, or may appear to have, a conflict of interest. In fact, it should be assumed that lessee representatives and many general representatives *will* have conflicts, or the appearance of conflicts, with regard to certain Board decisions. The conflict of interest policy presented here is intended to deal with the situations in which such decisions are to be made. (Also see Chapter 4, “CLT Bylaws Considerations,” regarding conflict of interest in connection with the federal Home program.)

ARTICLE VI: STEWARDSHIP OF LAND

1. **Principles of Land Use.** Though the principles stated are necessarily very broad, the intent of this section is to establish within the bylaws the basic principles of land use that are essential to the CLT model.
2. **Encumbrance of Land.** It is important that no mortgage or other encumbrance be allowed to take precedence over a CLT ground lease. Lessees must have assurance that, even if such a mortgage is foreclosed, their rights under the ground lease will not be affected. Earlier versions of these model bylaws required that lessees approve any mortgage on the land. This version assumes that lessees’ rights are better protected by the requirement that such mortgages be subordinated to the lease.
3. **Sale of Land.** This section establishes the basic principle that the CLT shall hold land permanently in trust and shall not treat it as something that can be bought and sold freely.
 - a. *Sale based on corporate purposes.* This paragraph did not appear in early versions of the Model Bylaws. It was added to simplify the process of selling land in situations where there is broad agreement that it does not make sense for the CLT to retain ownership – for instance, a situation in which a CLT has received a gift or

bequest of real estate that is outside the organization's service area and cannot be used by members of the community served. Some CLTs may choose to omit or modify the "within-sixty-days" requirement.

- b. *Sale in other circumstances.* Except in the circumstances described in paragraph *a* above, an affirmative vote by two thirds of the (entire) Board of Directors and two thirds of the members present at a membership meeting should probably be seen as the minimum requirement for a decision to sell land. Some CLTs may choose to require an affirmative vote by three quarters, or even a larger fraction, of the Board and/or membership.
- c. *Lessee's right of first refusal.* Such a right of first refusal is granted to ground lessees in Section 3.3 of the Model CLT Lease.

ARTICLE VII: OWNERSHIP OF HOUSING AND OTHER IMPROVEMENTS LOCATED ON THE CORPORATION'S LAND, AND LIMITATIONS ON RESALE

Like the previous article, Article VI establishes essential features of the CLT model in the bylaws.

- 1. Ownership of Housing and Improvements on the Corporation's Land.** This section makes explicit the Board's responsibility not only to promote the use of the CLT's land by low-income (or low and moderate income) people but to promote opportunities for *ownership of buildings* on this land by those who use it. The intent is not to prohibit the CLT from renting homes to residents when resident-ownership is impossible or undesirable. Nonetheless, CLTs that anticipate a substantial involvement with resident-controlled rental housing will probably want to modify this paragraph.
- 2. Preservation of Affordability** This section establishes the important principle that in most cases the Board is to lease land on terms that insure that homes on the land can only be sold back to the CLT or to other "income-qualified" people, and for prices that do not exceed what is affordable for such people. However, the section allows for situations where a CLT's standard resale restrictions may be less appropriate – as for instance in the case of "mixed-income" developments where some homes are sold, without subsidies, for market-rate prices.
- 3. The Resale Formula.** Since reaching agreement on a formula requires balancing a number of concerns, the two principles presented here are qualified with the phrase "to the extent possible." See Chapter 12, "Resale Formula Design," for a full discussion of the process of designing a resale formula.
- 4. Procedures for Adoption of the Resale Formula.** Some CLTs have allowed the board alone to adopt the formula in the first place, while requiring membership approval for any subsequent *changes* in the formula. The assumption in such cases is that it would be impractical to involve the full membership in the complicated process of developing a fair and workable formula, but that, once a formula has been established and implemented, any decision to change it could have such serious consequences that the approval of the membership should be required. However, these model bylaws require membership approval of the original formula as well as of any changes in the formula – on the assumption that it is not impractical to ask the membership to approve a formula proposed by the board, and that the involvement of the membership on this issue will

strengthen their understanding of, and commitment to, the formula that is adopted.

- 5. Procedures for Altering the Resale Formula.** The basic concern here is that the formula not be changed simply for the purpose of benefiting certain individuals, even if those individuals are a preponderance of the membership. Some CLTs have required that, before a motion to change the formula can be entertained by the board, the board must determine, in a separate vote, that the current formula presents an obstacle to the achievement of the corporate purposes. Some CLTs may choose to require an affirmative vote by three quarters, rather than two thirds, of the board and/or membership for an action to change the formula.

ARTICLE VIII: AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS

A two-thirds vote by directors and members, as required here, should be seen as the minimum appropriate requirement for the amendment of articles or bylaws. Some CLTs require an affirmative vote by three quarters of the directors and/or members. Others require a higher percentage vote for the amendment or repeal of those sections that establish the basic features of the CLT model (those relating to land stewardship, the resale formula, dissolution, and the amendment process itself). In general, bylaws should not make it unduly difficult to enact amendments that facilitate organizational efficiency and effectiveness but should not make it overly easy to alter those aspects of the organization that are essential to the CLT model.

ARTICLE IX: DISSOLUTION

To qualify for 501(c)(3) tax-exempt status, a CLT must include in its articles of incorporation strict limitations on the distribution of assets upon dissolution (see Chapter 6, “Tax Exemption”). It is not necessary to repeat these limitations in the bylaws. It should be noted, however, that these limitations apply to the final distribution of the *net* assets of the organization. They do not limit the organization’s right to liquidate particular parcels of real estate or other assets by selling them to any party for a fair market price.

Some CLTs do include in their bylaws more specific provisions regarding the distribution of land holdings upon dissolution. These provisions may specify that land shall be distributed to another community land trust, or, in the absence of another community land trust able and willing to assume ownership, to another organization with corporate purposes that include the long-term preservation of affordable access to land and housing for low-income people. (Regarding transfer of the CLT’s interest in land that has been leased to homeowners, see the homeowner’s right of first refusal established in Section 3.3 of the Model CLT Lease.)

Note that the period of notice required for action regarding dissolution is here stated as three weeks – the one exception to the basic requirement of one-week notice for board and membership meetings.

ARTICLE X: MISCELLANEOUS PROVISIONS

- 1. Fiscal Year.** Some organizations may have reasons for establishing a fiscal year that does not correspond to the calendar year. Often it is easier (and sometimes less

- expensive) to arrange for an audit at a time of year when accountants are typically less busy than in the months following the end of the calendar year. It may also be convenient to establish a fiscal year that corresponds with the fiscal year of a funding source from which the CLT expects (or hopes) to receive funding on an ongoing basis.
2. **Deposit of Funds.** The duties of the board and the Treasurer with regard to this basic requirement are treated in Articles III and IV.
 3. **Checks, etc.** The board's responsibility for designating and authorizing signatories is treated in Article III.
 4. **Loans.** The board's power to authorize borrowing and lending on behalf of the corporation is established in Article III. The present section makes it clear that *only* the board has the power to authorize such action, and that *each* such action must be specifically authorized. However, if the CLT establishes a loan fund to make small loans to its residents (e.g., for home repairs), it may be appropriate to amend this section of the bylaws to allow staff to approve such loans.
 5. **Contracts.** The purpose of this section, which relates to contracts other than loan contracts, is parallel to the purpose of the previous section.
 6. **Indemnification.** This section deals with the indemnification (reimbursement) of directors or officers for any costs they must pay as a result of legal actions taken against them *as* directors or officers – except in cases where they are actually found personally liable for negligence or misconduct. (Persons found *not* liable may still have substantial legal fees.) Indemnification may be required and limited by state law. Some organizations' bylaws quote the statutory provisions regarding indemnification but if these provisions are lengthy and complicated, you may prefer to say only that officers and directors shall be indemnified in accordance with state law.

ARTICLE XI: INITIAL MEMBERSHIP AND BOARD, ADOPTION OF BYLAWS, FIRST ANNUAL MEETING

Once the first annual meeting has been concluded, this article will have no continuing application to the affairs of the CLT, except as the basis for determining that due process was followed in adopting bylaws and holding the first election of directors. The provisions contained in this article could be placed in Articles II and III, but are here grouped in this separate article at the end of the bylaws so that they will not remain as potentially confusing "dead wood" among the live provisions of the earlier articles.

- 1-2. **Initial Membership and Board of Directors.** When provisions for initial members and initial directors are included in a CLT's articles of incorporation, it is not essential that they be included in the bylaws as well.
3. **Adoption of Bylaws.** It is assumed that, through the founding group's pre-incorporation meetings," the initial members and initial directors have already achieved basic agreement on the proposed bylaws. Approval by the initial board and ratification by the initial members should therefore proceed smoothly.