



The Land Trust Without Land: The Unusual Structure of the Chicago Community Land Trust

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Matthew Towey

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I. Introduction

During the past few decades, American home buyers “have feasted on a veritable banquet of public largess,” making homeownership more affordable.¹ Through a variety of financial aid programs, federal and local governments subsidize the purchase of homes.² Unfortunately, many housing subsidies, such as down payment assistance programs, provide short-term financial assistance but no long-term solution to the overall lack of affordable housing.³ Governments provide funds to low- and moderate-income families with no expectation of repayment.⁴ This approach has been likened by the Institute for Community Economics “to an attempt to stop a hemorrhaging patient by administering repeated transfusions without any action to stop the bleeding.”⁵ Rather than create a stock of affordable housing to benefit the entire community, subsidies help one home buyer purchase one home.⁶ The subsidies are inefficient because such public support must be repeated to ensure ongoing housing affordability.⁷

Whether government funds are spent efficiently will undoubtedly be an issue as the federal government spends more than a trillion dollars to prop up the economy.⁸ As part of the national response to the ongoing housing foreclosure crisis and related recession, the federal government has invested in housing in order to simultaneously stimulate the economy and revitalize our communities.⁹ For instance, Congress recently authorized the \$3.9 billion Neighborhood Stabilization Program (NSP).¹⁰ Of this nationwide expenditure, the City of Chicago received \$55 million to “buy and rehabilitate more than 2,000 foreclosed and vacant properties.”¹¹ In its application for the NSP funds, Chicago explained that it “may [] choose to place [some of these properties] in the Chicago Community Land Trust[,] . . . which was created in 2006 to ensure long-term affordability for homeownership units built with City of Chicago assistance.”¹²

Chicago is one of the latest to join the growing number of communities throughout the nation to establish a community land trust (CLT) to preserve subsidized affordable housing.¹³ If Chicago places the 2,000 NSP-funded homes into this new CLT, it will quickly become one of the largest CLTs in the nation.¹⁴ And these 2,000 homes are only the latest public investment in affordable housing in Chicago.¹⁵ For decades, Chicago has invested in affordable housing; and for decades, the city has attempted to ensure that these homes remain affordable in the future.¹⁶ The Chicago CLT was created to avoid the inefficiency of short-term assistance and to preserve the public subsidy in housing and provide affordable housing.¹⁷

Traditionally and by statutory definition, CLTs retain the ownership of the land upon which affordable housing is built.¹⁸ Home buyers purchase the homes, but not the land, and enjoy the benefits of lower-priced affordable housing.¹⁹ The CLTs lease the land to the homeowners and place restrictions upon the resale of the houses.²⁰ By retaining control of the underlying land, the land trust has the ability to ensure that the homes are resold at affordable prices to the next buyer.²¹ This strategy retains the initial public investment in affordable housing and preserves the subsidy for the benefit of the next generation of homeowners.²²

But the Chicago CLT is not a traditional CLT. Despite its name, it is not technically a CLT at all.²³ Rather than own land and dictate affordability through leases, the Chicago CLT instead ensures continued affordability through deed restrictions.²⁴ The deed restrictions place limits on the income of eligible buyers and the resale price of subsidized homes.²⁵ The Chicago CLT does not own land but manages and oversees the enforcement of these deed restrictions.²⁶

The goals of each approach, ground leases and deed restrictions, are the same: ongoing affordability and preservation of the initial public subsidy. However, the two strategies each have strengths and weaknesses. This paper will analyze the Chicago CLT's decision to utilize deed restrictions and will argue that although traditional CLTs provide more effective mechanisms to control long-term use of land, the Chicago CLT faces lesser financial burdens and therefore may ensure the permanent affordability of a greater number of homes than the traditional approach. During this era of scarce resources and great need, the Chicago CLT's decision to rely upon deed restrictions rather than ground leases may serve as an influential model for those communities nationwide that wish to create a pool of permanently affordable housing.

After this brief introduction, Section II describes the need for affordable housing and various responses to this need. The section introduces the traditional CLT as one possible response, briefly outlining its history and basic structure. The section concludes by describing the creation of the Chicago CLT. Section III provides a detailed explanation of the legal aspects of the ground leases used in the traditional CLT, followed by an analysis of the strengths and weaknesses of this model. Section IV provides a similar analysis of the deed restrictions used by the Chicago CLT, including the

strengths and weaknesses of this approach. Throughout this analysis and in the conclusion, the article attempts to evaluate the practical and legal consequences of Chicago's decision to forgo the traditional ground lease model and instead rely upon deed restrictions to ensure ongoing affordability of subsidized homes in the city.

II. Responding to the Need for Affordable Housing

Affordable housing remains out of reach for millions of American families despite decades of work by federal, state, and local governments in partnership with private organizations and housing activists.²⁷ In good economic times, housing prices can rise quickly, outpacing the spending power for many would-be home buyers.²⁸ In bad economic times, as today, homes may be more readily available, but stagnant wages and increased unemployment mean that homeownership remains impossible.²⁹ Section II describes the need for affordable housing throughout the nation and specifically in Chicago. The section also introduces several of the strategies that governments and organizations have used to help low- and moderate-income families overcome their financial challenges and purchase their own homes.

A. *The Need: The Lack of Affordable Housing*

Recent news accounts are filled with stories of slumping home prices and a glut of unsold homes on the market.³⁰ Yet homeownership remains unattainable for low- and moderate-income households.³¹ After years of escalating home prices, the "housing bubble" finally burst.³² But the corresponding economic recession has also led to job losses and a credit crunch.³³ For many people, incomes simply do not stretch far enough to afford the purchase of their own homes.³⁴

The federal government, through the Department of Housing and Urban Development (HUD) and its Office of Affordable Housing Programs, provides a guideline for housing affordability: "a household should pay no more than 30 percent of its annual income on housing."³⁵ The federal government calculates affordability by measuring the area median income (AMI) in each county and metropolitan area in the nation.³⁶ HUD publishes the AMI and uses the income figures to determine eligibility for many of its subsidized housing programs.³⁷ Households earning between 120 and 80 percent of the AMI are considered "moderate income," and those below 80 percent are defined as "low income."³⁸

Advocates and researchers often use these guidelines to quantify the need for affordable housing.³⁹ According to Harvard's Joint Center for Housing Studies' *The State of the Nation's Housing 2008*, in 2006, 39 million households paid more than 30 percent of their income for their housing.⁴⁰ Of this number, almost 17 million paid more than 50 percent of their income to cover their housing expenses.⁴¹

The burden of housing expenses can have devastating consequences, especially for low-income families. According to the Harvard report, 47 percent of households in the bottom-income quartile paid more than

30 percent of their limited income on housing.⁴² After paying for their housing, families with children in this income bracket have on average “just \$257 a month left over for food, \$29 for clothing, and \$9 for health care. With food and energy costs climbing, these households will have less to spend on bare necessities.”⁴³ The Harvard study noted that the current housing slump has not made it easier for low- and moderate-income families to secure affordable housing.⁴⁴ According to the report, “[t]o bring affordability back to its level in 2000 would take some combination of large price declines, interest-rate reductions, rent deflation, and unprecedented real income growth.”⁴⁵

Chicagoans face many of these same challenges.⁴⁶ The Chicago Rehab Network, a coalition of local development organizations, reported that in 2007 more than 41 percent of mortgaged homeowners paid more than 35 percent of their monthly income to own their homes, and more than 43 percent of renters paid more than 35 percent of their income for their housing.⁴⁷ Between 2001 and 2007, the median home price in Chicago rose 41 percent, but the local median income increased by only 7 percent.⁴⁸

In January 2009, Chicago released its *Five Year Affordable Housing Plan for 2009-2013*, noting that “the economy has affected [the city’s] affordable housing efforts in a number of negative ways”:

Rising unemployment, foreclosures, and condo conversions have increased the demand for affordable housing, especially rental housing. Rising food and fuel prices make it even harder for families to pay the rent or mortgage. Rising prices and slow tax collections have left the city, state and federal governments with less money for affordable housing programs.⁴⁹

Thus, just at the time when more families than ever may need financial help to afford their housing expenses, Chicago is less able to provide assistance.

B. The Response: Creating and Preserving Affordable Housing Opportunities

Despite these government funding challenges, Chicago’s five-year plan includes a commitment to invest \$2 billion to assist in the creation, rehabilitation, or preservation of more than 50,000 units of affordable housing.⁵⁰ Although the plan describes affordable rental property as the city’s top priority for the next five years, Chicago aspires to provide homeownership assistance to 8,000 units in the next five years.⁵¹

In an effort to make homeownership affordable to more families, Chicago and local governments often provide financial support through down payment assistance or a similar cash outlay.⁵² This one-time investment often allows low- and moderate-income families to buy residences in established and gentrifying neighborhoods with good jobs, schools, and community resources while enjoying the other benefits of homeownership.⁵³

In order to protect the public investment and ensure continued affordability, local governments attempt to recoup the initial subsidy when the owner sells the home.⁵⁴ Through various mechanisms, including CLTs, deed restrictions, limited equity cooperatives, and shared equity mortgages,

homeowners and communities share the increased value of the homes.⁵⁵ These strategies preserve and increase the value of the subsidy.⁵⁶ The mechanisms can be categorized as "investment retention strategies."⁵⁷

1. General Investment Retention Strategies

Investment retention strategies work by balancing the equity interests of a home buyer with the ongoing affordable housing needs of a community.⁵⁸ For home buyers, investment retention strategies provide access to homes they could not otherwise afford.⁵⁹ Homes purchased through these subsidized programs provide nearly all the benefits of traditional homeownership, including stable housing; an incentive to participate and improve the neighborhood; and, perhaps most importantly, the opportunity to build wealth through the appreciation in value of the homes.⁶⁰ This potential increase in equity is limited, however, because it is shared with the community through mechanisms that either require repayment of the financial assistance or limit the resale price of the properties.⁶¹ For communities, investment retention strategies ensure the ongoing affordability of homeownership for local workers and their families, protect the stock of affordable homes against the threat of conversion to market price, maintain the benefits of inclusionary zoning so that affordable units remain affordable, and increase the value of the initial public investment in affordable housing by "sharing" any increase in equity with the homeowner and reinvesting that share by lowering the purchase price for the next buyer.⁶²

Investment retention mechanisms are designed to preserve the initial public investment in affordable housing by placing limits on the resale of subsidized affordable housing.⁶³ As described by community development and affordable housing consultant Jeanne Goldie Gura, communities must choose one of two broad strategies to recoup the investment for future use: restrictions can attach to the cash or attach to the unit.⁶⁴

When the restriction "attaches to the cash," a home buyer must return the investment when the home is sold, often along with a share of any realized appreciation in the home.⁶⁵ The primary example of this approach is the shared appreciation loan or mortgage, which requires repayment of the initial subsidy plus a portion of the increase in the home value upon its sale.⁶⁶ The returned cash is available to support another home buyer to purchase a different home.⁶⁷

When the restriction "attaches to the land," the specific home is designated as permanently affordable.⁶⁸ The subsidized home buyer must abide by restrictions upon the resale of the home and land.⁶⁹ The restrictions typically limit the resale price of the home and the income level of the purchaser.⁷⁰ Subsidies that attach to the land are the focus of the remainder of this article because both the ground leases of the traditional CLT and the deed restrictions employed by the Chicago CLT are subsidy-retention strategies that attach to the land and limit the subsidized home buyers' opportunity to sell their homes.

2. Traditional CLTs

Advocates of CLTs often trace the origins of the CLT and shared ownership approaches to ancient models of social ownership such as Native American practices and rural utopian experiments.⁷¹ But according to attorneys Julie Farrell Curtin and Lance Bocarsly, CLTs “are a relatively new arrival on the affordable housing scene.”⁷² Civil rights leaders established the first CLT in rural Georgia in 1968.⁷³ The CLT leased its land to impoverished sharecroppers, who could own homes upon and farm the land.⁷⁴ Other rural communities, such as resort towns in the western United States, have used CLTs to ensure affordability in markets with expensive land and a limited supply of housing.⁷⁵

But most CLTs have been established in urban and suburban areas, where, like the resort towns, the market forces of high prices and low supply limit the housing opportunities for low- and moderate-income residents.⁷⁶ In 1980, the first inner-city CLT was established in Cincinnati in order to stave off impending gentrification of low-income neighborhoods.⁷⁷ In the 1990s and early 2000s, community leaders formed dozens of CLTs throughout the nation in response to the threat of rising home prices.⁷⁸

The history of CLT advocacy and literature begins with the influential *The Community Land Trust: A Guide to a New Model for Land Tenure in America* (Guide), published in 1972⁷⁹ by the International Independence Institute.⁸⁰ Its successor organization, the Institute for Community Economics, published the *Community Land Trust Handbook* (Handbook) in 1982⁸¹ and the *Community Land Trust Legal Manual* (Legal Manual) in 1991.⁸²

These publications were so influential to the understanding of the CLT structure that their approach to the CLT served as the foundation for federal legislation.⁸³ According to John Emmeus Davis, the Institute for Community Economics’ “refinement of the CLT model was enshrined in federal law in a definition approved by Congress” in 1992.⁸⁴ The statutory definition of a CLT, found in the Cranston-Gonzalez National Affordable Housing Act, succinctly and accurately describes the most relevant structural aspects of the model.⁸⁵ Because the definition clearly captures the most important components of the traditional CLT, it is included here in its entirety:

For purposes of this section, the term “community land trust” means a community housing development organization . . . —

- (1) that is not sponsored by a for-profit organization;
- (2) that is established to carry out the activities under paragraph (3);
- (3) that—
 - (A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
 - (B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and
 - (C) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

- (4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and
- (5) whose board of directors—
 - (A) includes a majority of members who are elected by the corporate membership; and
 - (B) is composed of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization.⁸⁶

The key provisions in this definition are the heart of the traditional CLT model: land ownership, ground leases, resale restrictions, and democratic governance.

3. The Chicago CLT

Riding the wave of urban land trust creation, the Chicago CLT was established in 2006 to address the need for affordable housing in the city of Chicago.⁸⁷ At its founding, city officials proclaimed that Chicago was “the first big city to create a citywide community land trust.”⁸⁸

In the past, Chicago provided subsidies directly to low- and moderate-income home buyers through “soft second” mortgages.⁸⁹ When subsidized home buyers sold their homes, they had to repay these loans.⁹⁰ The funds could then be used to support another home buyer.⁹¹ In other words, the subsidy attached to the cash. However, as described by Rick Jacobus and Michael Brown of Vermont’s Burlington Associates, “the affordable unit was lost and, because of rapid appreciation and increasing development costs, recaptured funds were insufficient to cover the cost of a new affordable unit.”⁹² In response, the city explored options for permanent affordability.⁹³

The city began investigating the usefulness of the CLT approach in 2004.⁹⁴ The Chicago Department of Housing⁹⁵ hired CLT experts from Burlington Associates to consult in the exploration and convened an advisory group of local housing experts.⁹⁶ Together, the group explored numerous options, including the formation of multiple neighborhood-level CLTs.⁹⁷ In the end, the city and its advisers concluded that a single, citywide CLT would be the most efficient and effective means to preserve long-term affordability of subsidized homes.⁹⁸ The advisory group hoped that the citywide CLT would increase the scale and pace of CLT housing development, standardize the legal documents and resale formula, fairly distribute CLT housing throughout the city, and eliminate inefficient duplication of effort and expense.⁹⁹

The Department of Housing, with a small \$15,000 grant from the MacArthur Foundation, began to organize the Chicago CLT.¹⁰⁰ The city council passed the ordinance to establish the Chicago CLT in 2006, creating a nonprofit organization that is now housed and staffed by the Department of Community Development.¹⁰¹ With an additional \$396,000 from

the MacArthur Foundation to support its first years of operation,¹⁰² the Chicago CLT began accepting homes into the program in 2007.¹⁰³

Through the Chicago CLT, Chicago hopes to retain its investment in affordable housing and create a “permanent pool of ownership opportunities for working families.”¹⁰⁴ Chicago’s investment in affordable housing is substantial: through federal, state, and local funding, the City of Chicago has provided more than \$4 billion to create and preserve affordable housing since 1989.¹⁰⁵

If the founders of the Chicago CLT utilized the traditional CLT model, the public investment in affordable housing would be protected by ownership of the land upon which affordable housing was built. Interestingly, when Chicago Mayor Richard Daley publicly announced the formation of the Chicago CLT in late 2005, the accompanying press release described the Chicago CLT as a traditional CLT: “Under the CLT, the land beneath a home is leased to the homeowner through a long-term renewable ground lease. When the homeowner decides to move, he or she can sell the home for an amount determined by the resale formula set forth in the ground lease.”¹⁰⁶

At some point after this press release but before beginning operations, the Chicago CLT decided to abandon the traditional model. Today, the Chicago CLT does not own land and instead ensures continued affordability through deed restrictions.¹⁰⁷ The deed restrictions limit the resale price of subsidized owner-occupied homes.¹⁰⁸ The Chicago CLT manages and oversees the enforcement of these deed restrictions.¹⁰⁹

Chicago is not the first community to use deed restrictions to preserve affordability.¹¹⁰ And it is not the first to do so under the auspices of a CLT.¹¹¹ The Chicago CLT, however, does not plan to own land at all, which is an unusual choice for an organization calling itself a land trust. The Chicago CLT is counting on the effectiveness of deed restrictions, which it claims “work[] like the ground lease to maintain long-term affordability.”¹¹²

The following sections analyze whether long-term deed restrictions do indeed work like ground leases. Based in part on the Chicago CLT’s own analysis of the issues, the following sections explore in detail the decision to use deed restrictions.¹¹³ Sections III and IV describe the organizational and ownership structures of the traditional CLT and the Chicago CLT and investigate the practical and legal consequences of each.

III. The Traditional CLT and Ground Leases

A. The Structure of the Traditional CLT and Ground Leases

As noted above, the statutory definition of the traditional CLT captures the four most relevant structural aspects of the model: land ownership, ground leases, resale restrictions, and democratic governance. These key characteristics are a part of every traditional CLT.¹¹⁴

First and foremost, a traditional CLT holds land in trust.¹¹⁵ To justify perpetual ownership, advocates for traditional CLTs argue that because land is

a finite resource, it should be protected and held in trust for the long-term benefit of the people who occupy and use it.¹¹⁶ For a traditional CLT to be successful, it must have either opportunities to purchase affordable parcels of land or significant financial resources to obtain expensive land. In some cases, a traditional CLT will purchase bargain-priced dilapidated properties in low- and moderate-income neighborhoods, intending to restore or replace the existing homes.¹¹⁷ But in communities where CLTs are most often needed, land is scarce and prices are high.¹¹⁸ Traditional CLTs must therefore rely upon multiple strategies to acquire land, including donations of land from government or private parties, inclusionary zoning requirements, eminent domain, or various financing schemes.¹¹⁹

Second, the traditional CLT enters into ground leases with eligible low- and moderate-income home buyers. These qualified households lease the land and purchase any house that sits upon the land.¹²⁰ The lease gives the home buyer the exclusive use of the land and the house.¹²¹ In a traditional CLT, the lease term is ninety-nine years.¹²² The house and the lease can be passed by inheritance or bequest to certain family members at death.¹²³

Third, the traditional CLT imposes resale restrictions upon the homeowners who hold the ground leases. The ground lease itself is the legal tool that ensures affordability under the traditional CLT model.¹²⁴ The CLT ground lease typically includes the following restrictions: (1) the home must be occupied by the low- or moderate-income owner,¹²⁵ (2) the CLT must retain a preemptive right to purchase the home if and when the owner chooses to sell,¹²⁶ and (3) the resale price of the home must be calculated by a defined formula to ensure affordability.¹²⁷ Through these provisions, the ground lease ensures that CLT homes will continue to be available for eligible households. The restrictions limit the equity available to the sellers but retain and recycle the public investment in affordable housing.

Finally, the traditional CLT operates as an organized legal entity to own the land that is held in trust. In most cases, the CLT is a distinct nonprofit corporation that qualifies as a tax-exempt organization.¹²⁸ Nearly all traditional CLTs are membership organizations, with membership open to any adult who lives within the geographic area of the CLT.¹²⁹ Members elect a governing board, which is typically required by the organization's bylaws to represent three distinct groups: (1) homeowners who lease land from the CLT; (2) local residents who do not own CLT homes; and (3) local government officials, lenders, funders, and developers who are "presumed to speak for the public interest."¹³⁰ This structure, referred to as the tripartite board, promotes democratic participation by all three constituencies to ensure that all concerns can be raised and addressed.¹³¹

Advocates for the traditional CLT recognize that dual ownership, with the CLT owning the land and the home buyer owning only the house, differs greatly from the historical land tenure model in America.¹³² In the International Independence Institute's influential 1972 *Guide*, the authors justified this new approach by explaining that in the nineteenth century, private ownership of land contributed to high productivity and personal

independence.¹³³ Today, however, due to the concentration of land ownership and the corporate control over more and more property, the system of private ownership leads to great inequity: "Middle-income families, as they attempt to purchase their homes, are forced to pay inflated prices, and the poor, as always, are almost totally excluded."¹³⁴

Despite this departure from the historical land tenure model, the authors of the Institute for Community Economics' *Legal Manual* argue that the traditional CLT structure is "true to the popular vision that fuels the American reverence for private property."¹³⁵ The traditional CLT model, by this account, rewards the efforts of CLT homeowners for their investment and continued improvement in the house but does not allow them to reap the benefits of unearned, speculative increases in land and property prices.¹³⁶ Instead, the traditional CLT, which owns the land and makes the housing affordable in the first place, can continue to offer long-term affordability by retaining the value of any unearned appreciation for the benefit of low- and moderate-income home buyers.¹³⁷

B. The Legal and Practical Benefits of the Traditional CLT and Ground Leases

In the last forty years, dozens of communities have established CLTs and have adopted the traditional model of land ownership and ground leases.¹³⁸ The following explores the strengths of this approach to affordable housing preservation.

1. Ground Leases Allow Permanent Ownership and Control of the Land

As described by the Institute for Community Economics in the *Handbook*, "[w]hen land, housing, and commercial developments are offered for sale, they are subject to a market which recognizes only the potential for profit, not the needs of the people whose security depends on this land and property."¹³⁹ By retaining ownership of the land, the traditional CLT removes it from the speculative market and ensures ongoing community access and control.¹⁴⁰ Additionally, the community retains any unearned increased value of the land, i.e., the equity created by market forces or by the development efforts of the entire community.¹⁴¹

The traditional CLT balances the interests of the occupant leaseholder and the community by providing both secure, long-term homeownership opportunities and democratic land use control for future development.¹⁴² According to the Institute for Community Economics, this model can help communities "avoid the score of 'public versus private' or 'owner versus regulator' controversies that often paralyze" land use planning.¹⁴³ By retaining title to the land permanently, the traditional CLT serves as an effective vehicle for community participation in the planning, development, and future use of the scarce commodity of land. It does so by removing land from the market and no longer treating it as a commodity at all.

2. Ground Leases Are Flexible and Effective Instruments

The traditional CLT ground lease term is ninety-nine years, and, in most instances, the lease is renewable.¹⁴⁴ The long-term nature of the traditional CLT lease allows the leaseholders to enjoy nearly all of the rights of land ownership throughout their lifetimes.¹⁴⁵

The fact that ground leases are renewable distinguishes them from deed restrictions. Unlike the Chicago CLT's deed restrictions, which run with the land but are limited in time and are not renewable, the ground lease can be renewed with each subsequent traditional CLT home buyer.¹⁴⁶ The ground lease can transfer to assumed heirs and beneficiaries, and if it is, the lease can be renewed at the end of its ninety-nine-year term.¹⁴⁷ The combination of the renewable lease and permanent title to the land provides two strong mechanisms to ensure community control and ongoing affordability for low- and moderate-income homeownership.¹⁴⁸

C. The Legal and Practical Risks of the Traditional CLT and Ground Leases

Despite their prevalence, the traditional CLT and the reliance upon ground leases are not without challenges, including challenges based both upon perceptions and upon the law.

1. Ground Leases May Face Financing Hurdles

The first practical challenge faced by a traditional CLT and by potential homeowners is the unwillingness of lenders to finance a home purchase for a house but not the land upon which it sits.¹⁴⁹ They may worry about a security interest that resides in a house but not the land.¹⁵⁰ Lenders simply may be unfamiliar with the concept of the CLT and the dual ownership of the home buyer, who is borrowing to purchase the house, and the CLT, which retains ownership of the land.¹⁵¹

In a typical home mortgage scenario, lenders can place a lien on both the home and the land.¹⁵² If a lender is forced to foreclose, it can take ownership of both.¹⁵³ With a traditional CLT, however, a lender can only foreclose upon the house.¹⁵⁴ Lenders may be concerned by their ability to repossess a house that sits upon land owned by the CLT.¹⁵⁵ Additionally, banks may be concerned about the nature of the lease itself.¹⁵⁶ Any security interest in the house may be jeopardized by termination of the lease.¹⁵⁷

In response to lenders' concerns, advocates for traditional CLTs point to commercial leases and lenders' willingness to finance the construction and purchase of business facilities, even when the owners of these facilities do not own but instead lease the land.¹⁵⁸ For commercial leases, "the lender takes a lien on the property owned by the borrower, including both the building and the borrower's interest in the ground lease."¹⁵⁹ As long as the ground lease is long-term and provides recourse for the lender in case of default, lenders have demonstrated their comfort with dual ownership in the commercial context.¹⁶⁰ Through education and outreach to lenders, CLTs may be able to convince them to lend to residential homeowners as well.¹⁶¹

2. Ground Leases May Create Second-Class Homeownership

Just as lenders balk at the notion of split ownership of land and homes, purchasers may also hesitate to purchase a house without land.¹⁶² In order for a traditional CLT to be successful, home buyers must be convinced that their purchase of a house, without the land upon which it sits, is a wise investment.¹⁶³ In addition to this financial calculation, these home buyers must overcome any initial gut reaction that owning a house without land is not true homeownership.¹⁶⁴ For instance, when a traditional CLT was established in the Dudley Street neighborhood in Boston in the early 1990s, "the community land trust was a confusing concept to most people. Many wondered if people would really be owning their own homes if they [did not] own the land."¹⁶⁵ Comparing themselves to mainstream unsubsidized home buyers, purchasers of traditional CLT homes may consider theirs to be "second class" homeownership.¹⁶⁶

Some advocates for low-income home buyers have also voiced this concern.¹⁶⁷ They argue that "the resale restrictions which function to maintain affordability" in CLTs and similar models of affordable housing "also function as equity restraints for homeowners[,] . . . creating homeownership for low-income people which is inherently second class."¹⁶⁸ A traditional CLT, according to these critics, does not allow subsidized home buyers to own their land and sell it for a profit and thus "denies equity to those most in need of economic opportunity."¹⁶⁹ Organizers of traditional CLTs understand these criticisms but argue that the subsidized home buyers' desire to increase their personal income through equity is outweighed by the community's desire to maintain affordable housing for future generations of home buyers.¹⁷⁰

3. Ground Leases May Expose the CLT to Liability

The traditional CLT retains ownership of the land and, in doing so, may also retain responsibility for any legal liability incurred upon the land.¹⁷¹ Landlords are increasingly responsible for injuries that occur upon their leased land.¹⁷² Advocates for the traditional CLT recognize that "modern landlord tenant law has made the landlord in a typical residential situation much more responsible for the condition of the premises [than in the past] and, in some situations and jurisdictions, has prohibited the landlord from shifting some risks to the tenant."¹⁷³

Traditional CLT advocates argue against this trend in property law by pointing to the long-term ninety-nine-year lease and argue that under traditional common law approaches to property, the "CLT as lessor probably should not be under any obligation to anyone for conditions that develop on the premises after the tenant is in possession."¹⁷⁴ Illinois case law supports this application of the common law. For instance, in the recent Illinois case of *Klitzka ex rel. Teutonico v. Hellios*, plaintiffs attempted to sue a landlord after they were bitten by the tenant's dog.¹⁷⁵ The court dismissed their claim, citing "traditional common law" and cases holding that when a landlord gives up control of property to the tenant, the landlord cannot

be held liable for the dangers or defects on the property.¹⁷⁶ Unless a CLT is aware of defects at the time when the lease is signed, the tenant homeowner is likely to be liable for any subsequent legal claims, and the CLT will not be liable.¹⁷⁷

Thus, the legal risks of the traditional CLT appear minimal. The real weakness of the traditional CLT model appears to be a matter of perception: lenders and home buyers are unfamiliar with the concept of dual ownership and may not be willing to participate. This unfamiliarity, however, should not be considered a crushing blow to the traditional CLT model. As more communities begin to use the CLT strategy, home buyers and lenders may begin to appreciate this approach and overcome their discomfort and embrace the long-term stability that CLTs create.¹⁷⁸

IV. The Chicago CLT and Deed Restrictions

When affordable housing advocates in Chicago explored the creation of the Chicago CLT, they were open to the possibility of creating a traditional CLT that would retain permanent ownership of the land and ensure ongoing housing affordability through ground leases.¹⁷⁹ However, after exploring the advantages and disadvantages of the use of ground leases, the founders of the Chicago CLT chose to use deed restrictions instead.¹⁸⁰ Section IV analyzes this choice.

A. The Structure of the Chicago CLT and Deed Restrictions

Of the four elements of the traditional ground lease described above (land ownership, ground leases, resale restrictions, and democratic governance), the Chicago CLT utilizes only restrictions and governance. For governance, the Chicago CLT has adopted the traditional tripartite model.¹⁸¹ The Chicago CLT is technically a separate nonprofit organization, although it is staffed and housed by the Department of Community Development.¹⁸² As in the traditional model, the board includes housing experts and local residents; and once the Chicago CLT includes more than 200 homes, the board will include CLT homeowners as well.¹⁸³

The Chicago CLT owns no land and therefore has nothing to lease. Consequently, the Chicago CLT probably should not be called a CLT. Nonetheless, the Chicago CLT uses deed restrictions to accomplish the same subsidy-retention goals as the traditional CLT.¹⁸⁴ According to its own literature, the Chicago CLT

keeps homes affordable by signing a long-term affordability agreement, called a Deed Covenant, with the homeowner at the time of purchase. Through the Deed Covenant a homeowner agrees to resell the home to another income-qualified buyer (or the [Chicago] CLT) for a maximum resale price determined by a formula in the Deed Covenant. This formula allows homeowners to earn a portion of the market appreciation while keeping the price affordable for the next buyer. The Deed Covenant is recorded against the property, prior to the first mortgage.¹⁸⁵

Thus, unlike the traditional CLT, which relies upon contract and landlord law through the ground lease, the Chicago CLT relies upon exclusively upon property law through the deed restrictions.

The deed covenant is not as simple as the above description might indicate. Instead, it is a twenty-six--page document, plus eight additional exhibits.¹⁸⁶ Filled with legal recitals, definitions, and provisions, the essential promise by the homeowner appears early in the document: "in consideration" for the financial support provided to purchase the home, the homeowner "intends, declares, and covenants that the following covenants, conditions, rights and restrictions shall run with the land and shall bind the Homeowner and shall inure to the benefit of, and be enforceable by, the [Chicago] CLT."¹⁸⁷ Through the deed covenant, the Chicago CLT protects Chicago's investment in affordable housing and ensures that housing remains affordable citywide.¹⁸⁸

B. The Legal and Practical Benefits of Deed Restrictions

The founders of the Chicago CLT claim that deed restrictions "work like" ground leases.¹⁸⁹ The following explores the strengths and weaknesses of this approach to affordable housing preservation.

1. Deed Restrictions Avoid the Challenge of Land Acquisition

One of the biggest practical hurdles that every traditional CLT faces is the acquisition of land.¹⁹⁰ In their 2008 article praising CLTs, Curtin and Bocarsly lamented the fact that "[d]ue to the high cost of real estate in many parts of the country, CLTs have increasingly struggled to acquire land."¹⁹¹ The Chicago CLT does not intend to own land and therefore does not have to address this challenge. The Chicago CLT can simply ignore the expensive and time-consuming process of finding, financing, and purchasing land.

Instead, the Chicago CLT can protect the ongoing affordability of the wide variety of homes that are created through city programs without owning the land upon which they sit.¹⁹² For example, Chicago provides financial assistance through efforts such as the New Homes for Chicago and Chicago Partnership for Affordable Neighborhoods programs, which provide down payment assistance to eligible families.¹⁹³ Through yet another local initiative, the city can bring units into the Chicago CLT without spending any cash. Chicago's Affordable Requirements Ordinance requires certain new multiunit developments to set aside 10 percent of the units as affordable housing.¹⁹⁴ Developers are required to build these affordable units if they "receive a zoning change, purchase City-owned land, or are part of a downtown Planned Development."¹⁹⁵ Thus, new affordable housing is created without any cash outlay by the city. These affordable units are typically included in the Chicago CLT and are therefore subject to the deed restrictions.¹⁹⁶

Because the Chicago CLT does not need to secure land, it should be able to include more units of housing in the program for a much smaller cost. For the price of down payment assistance to eligible households (or even better, for the administrative effort of a zoning change), the Chicago CLT

can restrict the future use of the units and ensure their ongoing affordability for low- and moderate-income owners. This is perhaps the biggest advantage that the Chicago CLT has over the traditional model.

2. Deed Restrictions Avoid Perceived Second-Class Ownership

The attractiveness to potential buyers is another strength. As described above, one practical weakness of the traditional CLT is the unwillingness of home buyers to purchase a home but not the land upon which it sits.¹⁹⁷ Low- and moderate-income households may qualify to purchase an affordable home with a traditional CLT but refuse to do so because they perceive it to be second-class homeownership.¹⁹⁸

Chicago CLT buyers do not face the concern of owning a house without an ownership interest in the land upon which it sits. They own both the property and the improvements; and in this way, this model seems to reflect the realities of traditional unsubsidized homeownership.

Although home buyers of Chicago CLT properties may appreciate the fact that they own land (and may therefore be more willing to purchase a Chicago CLT property), in reality theirs is also a form of second class homeownership. They are not free to sell the house at market price.¹⁹⁹ They cannot sell to anyone whose income is too high.²⁰⁰ They cannot use their home and land as a speculative investment to increase their personal wealth.²⁰¹ Practically speaking, the Chicago CLT owner and the traditional CLT owner face the same decision: whether to accept the assistance of the CLT when purchasing their homes (and therefore accept the resale restrictions placed upon the homes) or to refuse the assistance of the CLT and potentially lose their only opportunity to own their own homes.

3. Deed Restrictions Offer Simpler Structure and Easier Financing

As described above, securing financing for traditional CLT homes can be a tricky, though not insurmountable, obstacle.²⁰² Lenders may be concerned by the dual ownership of the land and the house and may be less willing to finance the purchase due to concerns about their security interest in the property.²⁰³

The Chicago CLT model does not face this challenge. When income-eligible buyers purchase properties from the Chicago CLT, they buy both the land and the home.²⁰⁴ Although both are subject to resale restrictions, lenders are presumably more comfortable with financing purchases where they have a security interest in not only the house but the land as well. The bank can account for the deed restrictions when it considers the risk involved in the loan but can rest more easily knowing that it can foreclose upon both the house and the land.

However, as explained below, the fact that the bank has security interests against both the house and the land may also be one of the biggest weaknesses of the Chicago CLT's use of deed restrictions.

C. The Legal and Practical Risks of Deed Restrictions

Homes in Chicago neighborhoods are being boarded up due to foreclosures.²⁰⁵ What would happen if a Chicago CLT home was foreclosed upon? Would the house and the land both be lost from the stock of affordable housing? In addition to this practical risk of foreclosure, long-standing tenets of property law may jeopardize the effectiveness of deed restrictions. If strictly enforced, two traditional rules of private property, the rule against perpetuities and the rule against unreasonable restraints on alienation, might challenge the Chicago CLT's use of deed restrictions. The following analysis considers these practical and legal concerns in light of applicable Illinois law.

1. Deed Restrictions May Not Protect Against Foreclosure

As described in the previous section, ease of financing is one of the possible advantages to using deed restrictions alone instead of ground leases.²⁰⁶ The flip side to this benefit is the resulting risk of foreclosure. One of the primary risks of the Chicago CLT's decision to forgo land ownership and instead utilize deed restrictions is the possibility that the owner of a Chicago CLT property will run into financial difficulty and lose the property through foreclosure. Because the Chicago CLT does not own the land, this is a real disadvantage.

The Chicago CLT recognizes and understands this risk.²⁰⁷ While planning the structure of the program, the Chicago CLT considered its options in such an event.²⁰⁸ The Chicago CLT could try to enforce the resale restrictions against the banks, including the price and income constraints.²⁰⁹ However, if lenders believe that they will be forced to deal with covenants against the land in the event of foreclosure, they may refuse to loan to Chicago CLT home buyers in the first place.²¹⁰ The Chicago CLT eventually decided to risk foreclosure against Chicago CLT homes and land, and may be forced to choose whether or not to enforce the restrictions against lenders.²¹¹ The Chicago CLT attempts to minimize this risk by educating and supporting homeowners to ensure that as few owners as possible face the threat of foreclosure.²¹² Yet this practical risk remains for those homeowners who are unable to keep up with their home loan obligations, and the Chicago CLT will inevitably lose some properties to foreclosure.

2. Deed Restrictions May Violate the Rule Against Perpetuities

When communities first used CLTs and resale restrictions to preserve the affordability of housing, legal scholars identified traditional property laws that might jeopardize their enforceability.²¹³ One such law is the rule against perpetuities.²¹⁴ The rule against perpetuities, in its traditional form, holds that "[n]o interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest."²¹⁵

The Chicago CLT's right of first refusal may violate the traditional rule against perpetuities.²¹⁶ Because the Chicago CLT retains the right to purchase the deed-restricted property and because this right to purchase may

be exercised more than twenty-one years after a life in being at the creation of the deed restriction, it technically violates the rule.²¹⁷ A court that strictly enforces the rule against perpetuities could strike down the deed restriction, eliminating one of the Chicago CLT's most important strategies for retaining the affordability of the land and home.

Courts in Illinois have struck down similar preemptive rights to repurchase or rights of first refusal. In *Martin v. Prairie Rod & Gun Club*, the court ruled that "[g]enerally, the rule against perpetuities has been applied to preemptive rights of first refusal as well as to the typical option."²¹⁸ In *Martin*, the plaintiffs sought to enforce the right of first refusal that their ancestors had negotiated at the sale of the family farm.²¹⁹ The preemptive right required that "if (the defendant) shall wish to sell all the (farm) or any part thereof, then (the defendant) promises to give to the heirs (of the sellers) the option to purchase said lands or any part thereof."²²⁰ The court struck down this right of first refusal, noting that "the doctrine and the public policy of the rule against perpetuities are well entrenched and difficult to overcome."²²¹

The rule against perpetuities can be overcome, however, when the purpose of the future right to property is charitable.²²² Although this exception was created for estate planning purposes through charitable trusts,²²³ the logic of the exception may apply to the Chicago CLT's deed restrictions and option to purchase.²²⁴ Here, the right of first refusal can only be exercised by the nonprofit, tax-exempt Chicago CLT, and the reason for exercising the right of first refusal is to ensure that property remains affordable for low- and moderate-income families. A court may treat this as a charitable purpose that deserves to be exempt from the rule against perpetuities. However, no court has yet so held.

The drafters of the Chicago CLT deed covenant may have recognized the risk that the right to purchase may violate the rule against perpetuities.²²⁵ The deed restriction includes the following provision:

If any such option or right shall be construed to be subject to any rule of law limiting its duration, the time period for the exercising of such option or right shall be construed to expire twenty (20) years after the death of the last survivor of President George W. Bush as of the execution date of this Restrictive Covenant.²²⁶

If a CLT homeowner convinces a court that the resale restrictions violate the rule against perpetuities, this "savings clause" should rescue the deed restrictions in cases where the period of perpetuities has not yet expired. However, if it has been more than twenty years since the death of the measuring life, CLT homeowners may be able to sell their homes and land at market prices, enjoying a windfall themselves and removing the properties from the stock of affordable housing in Chicago.

3. Deed Restrictions May Violate the Rule Against Restraints on Alienation

Just as the long-standing rule against perpetuities limits remote future interests, the common law also disfavors restraints against alienation of

property.²²⁷ A restraint on alienation is any restriction or provision that “prevents or discourages” owners of property from disposing of their property “at all or from disposing of it in particular ways or to particular persons.”²²⁸ Thus, the Chicago CLT’s deed restrictions, which limit both the price at which owners may sell their properties and the incomes of those to whom the owners may sell, are undoubtedly restraints upon alienation. The question, then, is whether the restraints are void because of the general rule against such restrictions or instead may be exempt from the common law rule under current Illinois law.

Illinois courts, like those in many other states, disallow restraints on alienation except in rare circumstances. As described by the court in *Baker v. Loves Park Savings & Loan Ass’n*, owners of property have the right to convey their land as they see fit, based on public policy and the effort to promote free commerce and the improvement of property while avoiding the concentration of wealth. The court held that “as a general rule,” any restraint on alienation is contrary to the public policy concerns.²²⁹ The court in *Baker* continued: “Consequently, only where a restraint in alienation is reasonably designed to attain or encourage accepted social or economic goals, will it be sustained.” The court ruled that “the crucial inquiry should be directed at the utility of the restraint as compared with the injurious consequences that will flow from its enforcement. If accepted social and economic considerations dictate that a partial restraint is reasonably necessary for their fulfillment, such a restraint should be sustained.”²³⁰

The issue, then, for the Chicago CLT is whether its resale restrictions are necessary to fulfill accepted social and economic goals. In order to be sustained, each of the numerous deed restrictions set forth by the Chicago CLT must be reasonably necessary to achieve accepted social or economic goals. The price formula, the purchaser’s income, and the right to repurchase must each be necessary to preserve the affordability of the land and home in order to be valid restraints upon the otherwise free ability to sell and dispose of the Chicago CLT properties.

As an example, the right to repurchase or right of first refusal has been subjected to the “reasonably necessary” test. Based upon case law in Illinois, the right to repurchase may survive judicial scrutiny. In *Wolinsky v. Kadison*, an Illinois appellate court ruled that a condominium board may exercise a right of first refusal, but it must do so reasonably.²³¹ For condominium associations, the accepted social or economic goals that justify a right to repurchase include the “protection, preservation, or proper operation” of the condominium properties.²³²

The Chicago CLTs can likely justify the deed restrictions as reasonably necessary to achieve accepted social or economic goals. As proof that resale restrictions have fit this criteria, the traditional CLT, including its resale restrictions, has been recognized in state statute.²³³ The Illinois Affordable Housing Planning and Appeal Act codifies the definition of a CLT in Illinois law:

A local government may create a community land trust, which may: acquire developed or undeveloped interests in real property and hold them for affordable housing purposes; convey such interests under long-term leases, including ground leases; convey such interests for affordable housing purposes; and retain an option to reacquire any such real property interests at a price determined by a formula ensuring that such interests may be utilized for affordable housing purposes.²³⁴

Although the Chicago CLT does not meet this definition in its entirety because it does not own land, the option to acquire the property for the purpose of ongoing affordability is the same. Because Illinois statute allows resale restrictions for the purpose of preserving affordable housing, the Chicago CLT's restraints likely qualify as reasonably necessary to achieve accepted social or economic goals.

Although the trend to allow reasonable restraints on alienation certainly favors the Chicago CLT's decision to utilize deed restrictions, the risk remains. After all, this is only a trend and could be reversed if courts so choose. A single lawsuit brought by a deed-restricted owner and represented by persuasive counsel before an old-fashioned judge or sympathetic jury may jeopardize the entire structure of the Chicago CLT by eliminating the enforceability of one or all of the deed restrictions. The same lawsuit would likely have a negative impact on a traditional CLT as well, abolishing its ability to enforce resale price restrictions or repurchase agreements. At least with a traditional CLT, however, the community organization would retain full ownership of the land.

V. Conclusion

Unstable housing was the root of the current economic recession, and the eventual recovery may rely heavily upon restoring the housing market.²³⁵ And, undoubtedly, the federal government will invest substantial financial resources into affordable housing as part of the economic stimulus effort.²³⁶ Out of the current chaos, communities have the opportunity to create permanent housing affordability for generations of homeowners.

In the end, Chicago's decision to abandon the traditional CLT model of ground leases in favor of deed restrictions was a matter of analyzing risk and balancing priorities. Every community that investigates the possibility of creating a CLT will likely weigh the risks and benefits of various approaches, including the issues of enforceability, flexibility, public perception, overall costs, and long-term effectiveness. The Chicago CLT's eventual choice may serve as a model for communities around the nation that are considering their options for preserving the affordability of their local housing. In the current economic environment, with a great need for ongoing housing price stability yet a scarcity of financial resources, Chicago's decision to deed restrictions rather than ground leases may be the wiser choice.

The traditional CLT does have advantages. In terms of flexibility, the ground lease is a useful instrument because it is renewable and transferable. In terms of enforceability, if the restrictions were successfully challenged under the old rules against perpetuities or restraints on alienation,

the traditional CLT would retain ownership of the underlying land, which is a clear advantage over the deed restriction approach. And, for very-long-term affordability, the ground lease is a better tool because (1) the lease can be renewed and (2) the CLT retains ownership and can better control the future use of the land.

To some degree, the current economic and housing climate mitigates the traditional CLT's greatest weakness: the cost of land acquisition. After years of growth, property values have stagnated and fallen throughout the nation.²³⁷ In many communities, housing and land are more affordable than they have been in several years.²³⁸ Nationally, the average price of land and homes decreased by 18.2 percent in 2008; and in Chicago, single-family home prices decreased 14.3 percent.²³⁹ Although this downturn gives a traditional CLT somewhat more buying power, this dip in prices does not substantially increase the ability of a traditional CLT to purchase land. To further weaken the purchasing power of the traditional CLT, the sources of cash for the traditional CLTs have declined right along with the price of housing. The tax revenue of local governments and the endowments of local foundations have fallen, so the opportunity to purchase relatively affordable land is negated by lack of funding to do so.²⁴⁰

Although the Chicago CLT decided to use deed restrictions well before the current economic crisis, the weak financial system and the need for immediate housing stabilization help to justify the Chicago CLT's choice to forgo land acquisition and rely exclusively on its deed covenant. By using deed restrictions, the Chicago CLT can grow much more quickly than a traditional CLT. Without the financial burden of land acquisition, the Chicago CLT can place restrictions on the future use of hundreds, perhaps thousands, of homes created through numerous city programs.

Many existing Chicago programs provide support to home buyers without requiring municipal ownership of the land.²⁴¹ With the federal stimulus, many new programs are in the pipeline.²⁴² The NSP described in the introduction is simply one of many new sources of federal support for affordable housing in Chicago.²⁴³ In order to maximize the impact of the federal stimulus funding, Chicago should help as many home buyers as possible and add as many properties as possible to the Chicago CLT. If the Chicago CLT does so, the stimulus spending will do more than simply help revive the economy. Through its unusual reliance on deed restrictions, the Chicago CLT can ensure that the public investment will benefit low- and moderate-income home buyers for decades to come.

1. JOHN EMMEUS DAVIS, *SHARED EQUITY HOMEOWNERSHIP: THE CHANGING LANDSCAPE OF RESALE-RESTRICTED, OWNER-OCCUPIED HOUSING* 81 (2006), *available at* www.burlingtonassociates.com/resources/archives/SharedEquityHome.pdf.

2. *Id.*

3. INST. FOR CMTY. ECON., *THE COMMUNITY LAND TRUST HANDBOOK* 26 (1982).

4. DAVIS, *supra* note 1, at 81.

5. INST. FOR CMTY. ECON., *supra* note 3, at 26.

6. *Id.*

7. *Id.*; DAVIS, *supra* note 1, at 81.
8. See David M. Herszenhorn, *Components of Stimulus Vary in Speed and Efficiency*, N.Y. TIMES, Jan. 28, 2009, at A1.
9. Press Release, LISCChicago, \$55 Million to Stabilize Foreclosure Hotspots (Jan. 16, 2009), www.lisc-chicago.org/display.aspx?pointer=7153 (last visited Feb. 20, 2009).
10. *Id.*
11. *Id.*
12. CITY OF CHI., THE NSP SUBSTANTIAL AMENDMENT, http://egov.cityofchicago.org/webportal/COCWebPortal/COC_ATTACH/CHICAGONSPI12608.pdf (last visited Feb. 20, 2009).
13. See BURLINGTON ASSOCS., COMMUNITY LAND TRUSTS IN THE UNITED STATES: LIST AND CATEGORIZATION AS OF JULY 7, 2008, www.burlingtonassociates.net/resources/movies/CLTlist8.7.05.pdf (last visited Feb. 20, 2009).
14. See Janet Hamer, *CLTs Keep Housing Affordable*, 16 PARTNERS IN COMMUNITY & ECON. DEV. 3 (2006), www.frbatlanta.org/invoke.cfm?objectId=966E566F-5056-9F12-12EB4205DF332664&method=display_body (last visited Feb. 20, 2009) (describing the twenty-five-year-old Burlington Community Land Trust as the largest in the nation with 250 units).
15. See *infra* text accompanying note 87.
16. See *infra* text accompanying note 88.
17. See *infra* text accompanying notes 71–82.
18. See *infra* text accompanying notes 83–86.
19. *Id.*
20. *Id.*
21. See *infra* text accompanying notes 115–31.
22. *Id.*
23. See *infra* text accompanying notes 107–09.
24. See *infra* text accompanying notes 181–88.
25. *Id.*
26. *Id.*
27. See Peter Marcuse & W. Dennis Keating, *The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 253 (Rachel G. Breatt, Michael E. Stone & Chester Hartman eds., 2006).
28. JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 6 (2008).
29. *Id.* at 27–31.
30. See, e.g., Michael Corkery, *Harsh Reality of House Glut Hitting Home*, WALL ST. J., Nov. 19, 2008, at C1.
31. JOINT CTR. FOR HOUS. STUDIES, *supra* note 28, at 27.
32. See Paul Krugman, *Life Without Bubbles*, N.Y. TIMES, Dec. 22, 2008, at A33.
33. See David Pierson, *Economic Forecast: Thick Clouds of Recession Until at Least 2010*, L.A. TIMES, Dec. 10, 2008.
34. See *infra* text accompanying notes 39–45.
35. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, www.hud.gov/offices/cpd/affordablehousing/index.cfm (last visited Feb. 20, 2009).
36. POLICYLINK, AFFORDABLE HOUSING 101, www.policylink.org/EDTK/AH101/What.html (last visited Feb. 20, 2009).
37. *Id.*

38. *Id.*
39. *Id.*
40. JOINT CTR. FOR HOUS. STUDIES, *supra* note 28, at 4.
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.* at 27.
45. *Id.*
46. CITY OF CHI., ACCEPTING THE CHALLENGE: CHICAGO'S FIVE YEAR AFFORDABLE HOUSING PLAN FOR 2009–2013, at 6, *available at* www.chicagorehab.org/resources/docs/policy/fiveyearplan/2009_2013_fiveyearplan.pdf.
47. CITY OF CHI., 2007 HOUSING FACTSHEET, *available at* www.chicagorehab.org/resources/docs/research/city_of_chicago_2007acs.pdf.
48. Erika Monroe & Dena Al-Khatib, Presentation at the Washington State Housing Finance Commission 2008 Conference, www.wshfc.org/conf2008/presentations/tbb1.pdf.
49. CITY OF CHI., *supra* note 46, at 6.
50. *Id.* at 12.
51. *Id.*
52. DAVIS, *supra* note 1, at 81.
53. *Id.* at 11.
54. *Id.* at 81.
55. *See id.*
56. *See id.*
57. *See id.* (describing the approaches as “subsidy retention” strategies).
58. *Id.* at 10–11.
59. *Id.*
60. *Id.*
61. *Id.*
62. *See* RICK JACOBUS & JEFFREY LUBELL, PRESERVATION OF AFFORDABLE HOMEOWNERSHIP: A CONTINUUM OF STRATEGIES (2007), *available at* www.ncbcapitalimpact.org/uploadedFiles/downloads/JacobusLubelloptions4-07.pdf.
63. *Id.* at 4.
64. Jeanne Goldie Gura, *Preserving Affordable Homeownership Opportunities in Rapidly Escalating Real Estate Markets*, 11 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 78, 79 (2001).
65. *Id.*
66. JACOBUS & LUBELL, *supra* note 62, at 14.
67. *Id.*
68. Gura, *supra* note 64, at 82.
69. *Id.*
70. *Id.*
71. Michael Stone, *Social Ownership*, in *A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA* 253 (Rachel G. Breatt, Michael E. Stone & Chester Hartman eds., 2006); *see also* INT’L INDEPENDENCE INST., *THE COMMUNITY LAND TRUST: A GUIDE TO A NEW MODEL FOR LAND TENURE IN AMERICA*, at xiii–xiv (1972).
72. Julie Farrell Curtin & Lance Bocarsly, *CLTs: A Growing Trend in Affordable Home Ownership*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 367, 370 (Summer 2008).
73. *Id.*

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75. Kirby White, Jill Lemke & Michael Lehman, *Community Land Trusts and Rural Housing*, in HOUSING IN RURAL AMERICA: BUILDING AFFORDABLE AND INCLUSIVE COMMUNITIES 190–93 (Joseph N. Belden & Robert J. Wiener eds., 1999).
76. JOHN EMMEUS DAVIS & RICK JACOBUS, THE CITY-CLT PARTNERSHIP: MUNICIPAL SUPPORT FOR COMMUNITY LAND TRUSTS 4 (2008).
77. Curtin & Bocarsly, *supra* note 72, at 371.
78. *Id.* at 372.
79. INT'L INDEPENDENCE INST., *supra* note 71.
80. JOHN EMMEUS DAVIS, STARTING A COMMUNITY LAND TRUST: ORGANIZATIONAL AND OPERATIONAL CHOICES 1 (2007), *available at* www.burlingtonassociates.com/resources/archives/creating_a_community_land_trust/000365.html. Interestingly, the cover page of Davis's manual includes the following: "A shorter version of this introductory manual was prepared for the MacArthur Foundation and the City of Chicago in 2001." This may indicate that the idea for a Chicago CLT predates the initial investigation described in this paper.
81. INST. FOR CMTY. ECON., *supra* note 3.
82. INST. FOR COMMUNITY ECON., THE COMMUNITY LAND TRUST LEGAL MANUAL 1-8 (1991).
83. DAVIS, *supra* note 80, at 1.
84. *Id.*
85. 42 U.S.C.A. § 12773.
86. *Id.*
87. CHI. CMTY. LAND TRUST, ORGANIZATIONAL OVERVIEW 1 (on file with author).
88. Press Release, Office of the Mayor 1 (Dec. 1, 2005), *available at* www.macfound.org/atf/cf/%7BB0386CE3-8B29-4162-8098-E466FB856794%7D/Chicago%20community%20land%20trust%20press%20release.pdf.
89. Rick Jacobus & Michael Brown, *City Hall Steps In*, 149 SHELTERFORCE ONLINE, Spring 2007, www.nhi.org/online/issues/149/cityhall.html.
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.*
94. CHI. CMTY. LAND TRUST, *supra* note 87, at 1.
95. The City of Chicago recently consolidated various city departments. Much of the Department of Housing was merged into the new Department of Community Development and Planning as of January 1, 2009.
96. CHI. CMTY. LAND TRUST, *supra* note 87, at 1.
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. JOHN D. & CATHERINE T. MACARTHUR FOUNDATION, MACARTHUR TO PROVIDE START-UP FUNDING FOR CHICAGO COMMUNITY LAND TRUST, Dec. 1, 2005, www.macfound.org/site/apps/nlnet/content3.aspx?c=1kLXJ8MQKrH&b=4201209&ct=1658865.
103. CHI. CMTY. LAND TRUST, *supra* note 87, at 2.
104. *Id.* at 1.
105. *Id.*

106. Press Release, *supra* note 88, at 1–2. The press release did note that for condominiums included in the Chicago CLT, “the resale formula is set forth in a long-term deed restriction, which works like the ground lease to maintain long-term affordability of the unit.”

107. CHI. CMTY. LAND TRUST, A TOOL FOR LONG-TERM HOUSING AFFORDABILITY 2 (on file with author).

108. *Id.*

109. Interview with Dena Al-Khatib, Executive Dir., Chicago CLT, in Chicago, Ill. (Nov. 21, 2008).

110. DAVIS, *supra* note 1, at 13–18.

111. DAVIS & JACOBUS, *supra* note 76, at 17–18 (explaining the Champlain Housing Trust’s use of deed restrictions to preserve the affordability of condominiums).

112. Press Release, *supra* note 88, at 2.

113. *Id.*

114. See *supra* text accompanying note 86.

115. However, as noted by noted CLT expert David Abromowitz, a traditional CLT is not technically a trust in the legal sense. Instead, it is an organization that owns land for the benefit of the community. David Abromowitz, *Community Land Trusts and Ground Leases*, 1 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 5, 6 (Spring 1992).

116. INST. FOR CMTY. ECON., *supra* note 82, at 1-8.

117. Stacey Janeda Pastel, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. LAND USE & ENVTL. L. 293, 296 (1991).

118. Curtin & Bocarsly, *supra* note 72, at 376.

119. *Id.*

120. Christopher A. Seeger, Note, *The Fixed Price Right in the Community Land Trust Lease: A Valid Response to the Housing Crisis or an Invalid Restraint on Alienation*, 11 CARDOZO L. REV. 471, 475 (1989).

121. DAVIS, *supra* note 80, at 2.

122. *Id.*

123. Curtin & Bocarsly, *supra* note 72, at 377–78.

124. *Id.* at 377.

125. Amnon Lehavei, *Mixing Property*, 38 SETON HALL L. REV. 137, 200–01 (2008).

126. *Id.*

127. Curtin & Bocarsly, *supra* note 72, at 377.

128. INST. FOR CMTY. ECON., *supra* note 82, at 1-10.

129. DAVIS, *supra* note 80, at 4.

130. *Id.* at 5.

131. *Id.* at 5–6.

132. INT’L INDEPENDENCE INST., *supra* note 71, at xv.

133. *Id.*

134. *Id.*

135. INST. FOR CMTY. ECON., *supra* note 82, at 1-9.

136. *Id.*; see also Benjamin S. Beach, *Strategies and Lessons from the Los Angeles Community Benefits Experience*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 77, 86–87 (2008).

137. INST. FOR CMTY. ECON., *supra* note 82, at 1-9.

138. DAVIS & JACOBUS, *supra* note 76, at 4.

139. INST. FOR CMTY. ECON., *supra* note 3, at 22.
140. *Id.*
141. *Id.* at 23–24.
142. *Id.* at 26.
143. *Id.* at 28.
144. Abromowitz, *supra* note 115, at 6.
145. INST. OF COMMUNITY ECON., *supra* note 3, at 210; Abromowitz, *supra* note 115, at 6.
146. Abromowitz, *supra* note 115, at 6.
147. Pastel, *supra* note 117, at 297.
148. *Id.* at 295–97.
149. INST. FOR CMTY. ECON., *supra* note 82, at 9-3.
150. *Id.*
151. *Id.*; see also Curtin & Bocarsly, *supra* note 72, at 378.
152. INST. FOR CMTY. ECON., *supra* note 82, at 9-3.
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.* at 9-3, 9-4.
158. Abromowitz, *supra* note 115, at 6.
159. *Id.*
160. *Id.*
161. See, e.g., FANNIE MAE, ANNOUNCEMENT 06-03: PROPERTIES SUBJECT TO RESALE RESTRICTIONS OR LOCATED ON LAND OWNED BY COMMUNITY LAND TRUSTS (Mar. 22, 2006) (providing guidance to lenders involved in CLT home purchases), available at www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2006/06-03.pdf.
162. Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*, 5 B.U. PUB. INT. L.J. 69, 91 (1995).
163. *Id.*
164. *Id.*
165. PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE RISE AND FALL OF AN URBAN NEIGHBORHOOD* 158 (1994).
166. Kenn, *supra* at note 162, at 91.
167. *Id.* at 91–92.
168. *Id.*
169. *Id.* at 91.
170. *Id.* at 92 (describing the arguments of Professor William Simon).
171. INST. FOR CMTY. ECON., *supra* note 82, at 3-6.
172. *Id.*
173. *Id.*
174. *Id.*
175. 810 N.E.2d 252, 256 (Ill. App. Ct. 2004).
176. *Id.*
177. INST. FOR CMTY. ECON., *supra* note 82, at 3-6.
178. See, e.g., FANNIE MAE, *supra* note 161, at 1.
179. See *supra* text accompanying note 106.
180. Interview with Dena Al-Khatib, *supra* note 109.
181. CHI. CMTY. LAND TRUST, *supra* note 87, at 2.

182. *Id.*
183. *Id.*
184. See *supra* text accompanying note 98.
185. CHI. CMTY. LAND TRUST, *supra* note 107, at 2.
186. CHI. CMTY. LAND TRUST, AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT, INCLUDING REALE, REFINANCING AND LEASING COVENANTS, CONDITIONS AND RESTRICTIONS, AND PURCHASE OPTION RIGHTS (on file with author).
187. *Id.* at 4.
188. CHI. CMTY. LAND TRUST, *supra* note 107, at 2.
189. See *supra* text accompanying note 112.
190. Curtin & Bocarsly, *supra* note 72, at 376.
191. *Id.*
192. CHI. CMTY. LAND TRUST, *supra* note 87, at 2.
193. CHI. DEP'T OF HOUS., HOMEOWNERSHIP PROGRAMS FACTSHEET (on file with author).
194. CHI. DEP'T OF HOUS., INCLUSIONARY HOUSING IN CHICAGO: THE AFFORDABLE REQUIREMENTS ORDINANCE, available at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_ATTACH/AROfactsheet.pdf.
195. *Id.*
196. *Id.*
197. See *supra* text accompanying notes 164–70.
198. *Id.*
199. See *supra* text accompanying note 185.
200. *Id.*
201. *Id.*
202. See *supra* text accompanying notes 149–57.
203. *Id.*
204. See *supra* text accompanying note 185.
205. Azam Ahmed & Darnell Little, *Neighborhood Ghost Towns: As Foreclosures Soar to Historic Levels, the City Is Beset with a Staggering Number of Vacant Homes*, CHI. TRIB., Feb. 22, 2009, at 1.
206. See *supra* text accompanying notes 202–04.
207. Interview with Dena Al-Khatib, *supra* note 109.
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. *Id.*
213. See Michael F. Keeley & Peter B. Manzo, *Resale Restrictions and Leverage Controls*, 1 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 78, 9–11 (1992).
214. *Id.* at 9–10.
215. JOHN A. BORRON, JR., SIMES & SMITH, THE LAW OF FUTURE INTERESTS § 1222 (3d ed. 2004).
216. See INST. FOR CMTY. ECON., *supra* note 82, at 12–5.
217. See *id.*
218. 348 N.E.2d 306, 309 (Ill. App. Ct. 1976).
219. *Id.* at 307.
220. *Id.* (parentheses in original).
221. *Id.* at 310.
222. Monarski v. Greb, 95 N.E.2d 433, 439 (Ill. 1950).

223. See BORRON, *supra* note 215, § 1392.
224. See Alexander R. Arpad, *Private Transactions, Public Benefits, and Perpetual Control over the Use of Real Property: Interpreting Conservation Easements as Charitable Trusts*, 37 REAL PROP. PROB. & TR. J. 91, 124 (2002).
225. See CHI. CMTY. LAND TRUST, *supra* note 186, § 14.4.
226. *Id.*
227. See BORRON, *supra* note 215, § 1117.
228. BLACK'S LAW DICTIONARY 1340 (8th ed. 2004).
229. Baker v. Loves Park Sav. & Loan Ass'n, 314 N.E.2d 306, 308 (Ill. App. Ct. 1974).
230. *Id.* (quoting Gale v. York Ctr. Cmty. Coop., 171 N.E.2d 30, 33 (Ill. 1960)).
231. 229 N.E.2d 151, 153 (Ill. App. Ct. 1983).
232. *Id.*
233. 310 ILL. COMP. STAT. 67/25 (2005).
234. 310 ILL. COMP. STAT. 67/25(d)(2).
235. See Peter Nicholas, *The Housing Crisis: Rescue Plan*, L.A. TIMES, Feb. 19, 2009, at 16.
236. *Id.*
237. See *supra* text accompanying note 33.
238. See Peter Y. Hong, *Home Values Sink to '02 Level*, L.A. TIMES, Feb. 20, 2009, at 1.
239. Francine Knowles, *Chicago Home Prices Fall Less Than Others*, CHI. SUN-TIMES, Feb. 25, 2009, at 40.
240. See Glenn Collins, *In Tight Times, Many Nonprofits Feel the Pinch as Contributions Dwindle*, N.Y. TIMES, Oct. 7, 2008, at A29.
241. See *supra* text accompanying notes 192–95.
242. See Sheryl Gay Stolberg & Edmund L. Andrews, *\$275 Billion Seeks to Address Crisis in Housing*, N.Y. TIMES, Feb. 19, 2009, at A1.
243. See *supra* text accompanying notes 9–12.