

CLT Ground Lease – Major Decision Points

LETTERS OF AGREEMENT AND ACKNOWLEDGMENT

Issue: Given the atypical nature of the transaction and the complex relationship that is created between the CLT and the homeowner, most CLTs require a letter signed by the potential homeowner indicating evidence that she understands the unusual nature of the transaction and a letter signed by the potential homeowner’s attorney certifying that independent advice and counsel has been obtained. CLT wants to assure that the potential homeowner is making a well-informed decision and to pre-empt a legal challenge to the resale restrictions or other terms of the lease by a disgruntled homeowner – or, more likely, by heirs claiming that the deal was not well explained/understood.

Decision to Make: What is the appropriate strategy to ensure that homebuyer households have independent advice and counsel *before* executing CLT ground lease?

Pros: Having an attorney’s letter adds another layer of assurance that the homeowner understands the transaction.

Cons: It costs money to have attorney’s review.

Options: (1) CLT pays for attorney’s review. (2) Make it a recommendation but not a requirement. (3) Orient local attorneys and arrange for *pro bono* or low-cost attorney review.

USE OF LEASED LAND

Issues:

1. Occupancy: CLTs typically want to discourage absentee ownership. Most CLT leases require a minimum of eight (8) months occupancy in a twelve-month period.

Decisions to Make: How best to define what constitutes owner-occupancy More time? Less time?

2. Inspection: Model ground lease gives CLT right to inspect the Leased Land only (with notice required unless emergency).

Decisions to Make: How intrusive do you want/need to be in day-to-day oversight of its homeowners? What are the administrative considerations? Do you want to right to inspect the interior of the home as well?

Pros: Ability to “monitor” use of land (and interior of home, if so decided). How will you know what’s going on if you can’t inspect

Cons: Feels intrusive.

Options: Many CLTs do not reserve the right to inspect the interior of the home.

3. Condition of Leased Land: At a minimum, CLTs require homeowners to comply with all applicable health and zoning laws.

Decision to Make: Does CLT wish to impose stricter stewardship standards?

Pros: Allows CLT to reinforce local preferences/standards.

Cons: Feels intrusive.

4. Assignment and Sublease

Issue: Most CLTs prohibit subletting of home, except in limited situations and only with CLT approval.

Decisions to make: Should the CLT allow subletting? If so, under what conditions? And what limits will CLT place on rents a homeowner can charge a tenant if temporary subletting is allowed? What about housemates/boarders?

Pros: Limits on subletting controls rentals by the homeowner to preserve affordability. CLT works hard to select homeowner but loses “control” when subleases occur.

Cons: Limits homeowner.

Options: Allow roommate/housemate rentals without CLT permission

LEASE FEE

Issue: CLTs typically charge a nominal monthly Lease Fee to homeowner to acknowledge that something of real value has been conveyed and to help offset organizational operating expenses. Lease Fee affects mortgage underwriting (i.e., it is “counted” in front-end underwriting ratios). And, to provide clarity to the homeowner – and ease concerns of the mortgage lender – you will need to decide not only the initial amount of this monthly lease fee but also how often the lease fee can be increased and what limits will be placed on the amount of each increase.

Decisions to Make: What is the amount of the monthly Lease Fee? How often can it adjust? Is there a cap on adjustments?

Pros: Philosophically important to have some monetary charge to homeowner in exchange for use of Leased Land. It costs the organization to run CLT and to manage stewardship obligations.

Cons: Higher Lease Fee decreases affordability.

Options: Limit increases to CPI or some other established index.

HOME

Issue: CLT has interest in ensuring that its homes remain livable, maintain the condition and quality, as well as remain affordable. Thus, most CLTs reserve approval rights for post-purchase construction and alterations.

Model ground lease says that construction is subject to following conditions: (1) all costs shall be borne and paid for by the homeowner; (2) all construction shall be performed in a workerlike manner and must comply with all applicable laws, ordinances and codes; (3) all construction must be consistent with permitted uses set forth in lease (“Use Restrictions”); (4) the exterior dimensions (including height) of the home may not be increased or expanded without the prior written consent of the CLT; and (5) Homeowner shall furnish to CLT a copy of all plans and building permits before the start of construction.

Decision(s) to Make: Should the lease be more restrictive? Should it define “allowable” construction/alterations?

Pros: CLT has ability to determine and monitor modifications to housing it has created, in order to ensure ongoing condition and quality of home. Ability to keep housing more affordable over time.

Cons: Limits homeowner. Difficult to determine what constitutes “allowable” alterations and how to establish “value.”

TRANSFER, SALE OR DISTRIBUTION OF HOME

1. Transfer to Designated Heirs

Issue: The model ground lease the homeowner the right to pass the home and the balance of the leasehold interest in the land to certain “designated heirs” (who don’t have to income qualify) when the homeowner dies. This “legacy” right promotes family security and the feeling of homeownership.

Decision(s) to Make: Which people are “designated heirs”? Does the definition include “household members” other than family members? Can these rights extend the right to allow giving the house *before* death?

Pros: Extending the right to pre-death accounts for nursing home, retirement, etc.

Cons: The wider the right, the less control the CLT has over who has access to the affordable house.

2. Sale of the Improvements

Issue: The ground lease stipulates the preemptive option of the CLT to purchase the home at the time that the homeowner wishes to sell. In the event that the CLT does not elect to exercise this option, the homeowner can sell to an income-qualified buyer. In either case, the price will be determined by a “resale formula”.

Decisions to make:

- How much appreciation in value will the homeowner be allowed to keep at time of resale?
- What about the value added or diminished by approved (or unapproved) post-purchase capital improvements?
- What effect will these preferences for the homeowner/seller have on the affordability of the incoming, limited-income homebuyer household?
- What about the binding affordability requirements, if any, of the funding sources used to create the initial affordability of the home?
- What is likely to happen to housing values in the market in which each CLT home is located?
- Which resale formula is most appropriate to use to determine how much equity the homeowner/seller will be allowed to keep at resale and how affordable the home purchase price will be to the incoming, limited-income homebuyer household?