



A Guide for Developing Community Land Trust Affordable Homeownership Programs in Texas

Eliza Platts-Mills, Clinical Professor
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**ENTREPRENEURSHIP AND
COMMUNITY DEVELOPMENT CLINIC**
THE UNIVERSITY of TEXAS SCHOOL of LAW

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Purpose of CLT Guide

This Guide is intended primarily for affordable housing developers and parts of the Guide may also be helpful for the low- and moderate-income families they serve. The goal of the Guide is to introduce the Community Land Trust affordable homeownership program to readers who are not yet familiar with it, to connect readers to excellent national and Texas-specific CLT resources, to share best practices in place in Austin for appraising CLT homes and land, and to share Texas-specific CLT legal documents.

The author, Eliza Platts-Mills, is an attorney and a Clinical Professor with the Entrepreneurship and Community Development Clinic at The University of Texas School of Law. The Clinic is a legal clinic staffed by three experienced Texas attorneys and second- and third-year law students who work under the close supervision of the licensed attorneys. The Clinic provides free transactional legal services to non-profit and low-income for-profit businesses in Texas and has extensive experience providing legal representation to non-profit affordable housing developers, including preparing all the legal documents to set up the first Community Land Trust program in Texas. The Clinic also helps clients with policy research and advocacy related to affordable housing in Texas.

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To learn more about the Entrepreneurship and Community Development Clinic, including how to apply for our services, please visit our website at <https://law.utexas.edu/clinics/ecdc/> or call (512) 232-2574.

This Guide is by no means a comprehensive description of every legal and business issue that will arise when creating a Community Land Trust in Texas. In addition, real estate law, like any other area of law, is subject to change by the state legislature and courts. As a result, while every effort has been made to make these materials as accurate as possible, these materials are not to be used as a substitute for the advice of an attorney. Persons reviewing this Guide should not act upon the information without seeking the advice of an attorney.

This Guide does not represent the official position of The University of Texas School of Law or The University of Texas. The information provided reflects only the opinions of the individual author and the Entrepreneurship and Community Development Clinic.

THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Entrepreneurship and Community Development Clinic
727 East Dean Keeton Street
Austin, Texas 78705
(512) 232-2574

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1. [Overview: Community Land Trust Policy](#) (with two attachments: The Community Land Trust Report by the City of Austin, which we have a link to under CLT National Resources, and The City-CLT Partnership report)
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I. An Introduction to the Community Land Trust Program

Community Land Trust affordable homeownership programs are a proven vehicle for long-term preservation and stewardship of public and private investment in affordable housing. Community Land Trust programs stand out for at least three reasons:

1. Community Land Trust programs provide long-term affordable homeownership units that give low- and moderate-income families safe, quality housing in stable communities, including communities that are undergoing development and rising prices. The resale and income eligibility restrictions preserve the affordable homes in perpetuity for the community.
2. Community Land Trust programs provide an entry into homeownership for households who were previously renting and cannot afford to purchase a home on the private market. CLT homeowners can learn the responsibilities of homeownership and build up some equity to take with them to their next home.
3. Community Land Trust programs are a reliable, sound investment for public and private partners. The financial assistance that these partners provide is retained in the homes for future homeowners instead of just the first generation of homeowners.

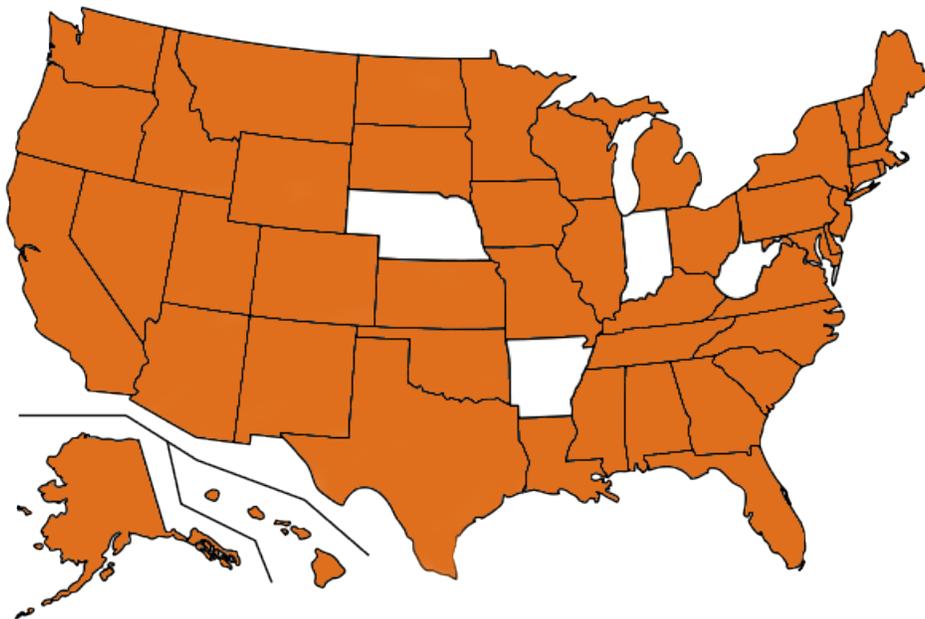
Community Land Trust Programs:

- Provide long-term affordable homeownership units
- Provide an entry into homeownership
- Are a reliable, sound investment for public and private partners

II. History of the Community Land Trust Program

CLT Programs in the United States

The first CLT affordable homeownership program in the United States was started in 1969. There are currently over 240 CLT programs operating in 46 states. A national organization called Grounded Solutions Network provides excellent resources and advice for CLT programs across the country. Ground Solutions Network is the non-profit organization that resulted after the merger of two other organizations: the National CLT Network and Cornerstone Partnership. The National CLT Network created a CLT Technical Manual that provides very helpful detailed guidance related to the CLT program. It can be found on the Ground Solutions Network website at <https://groundedsolutions.org/resources/#manual>. Grounded Solutions Network has a start-up CLT HUB on its website that is a great resource for new CLT programs: <http://groundedsolutions.org/start-upclthub/>.



■ States with CLT Programs

Important Resources

- The National Community Land Trust Network—CLT Technical Manual <https://groundedsolutions.org/resources/#manual>
- Grounded Solutions Network—Start-Up CLT HUB <http://groundedsolutions.org/start-upclthub/>

CLT Programs in Texas

Austin

The first CLT home sale in Texas was in 2011 in Austin. The organization that completed the first CLT home sale in Texas is a non-profit affordable housing development organization in Central East Austin named Guadalupe Neighborhood Development Corporation (“GNDC”).

- GNDC also provides single-family and multi-family rental housing for families at 60% or below of median family income.
- GNDC used to sell homes to low-income families with a “**Right of First Refusal**,” which required the families to give GNDC the right to match any offer to purchase from a third party.
- But when real estate values in Central East Austin started rising rapidly, GNDC couldn’t afford to exercise its right of first refusal to match the market sales price from the third party. In one case, GNDC had sold the home for \$100,000 to the first homeowner, and the market value increased to \$250,000, which was more than the nonprofit could afford. GNDC needed a way to keep the homes affordable despite increased market prices, which is why the organization turned to the **CLT program**.
- GNDC has used the CLT program to allow some of its long-time renter households to purchase single-family CLT homes and make the transition to homeownership. These single-family homes are located on non-contiguous plots of land in Central East Austin.
- GNDC is also building out an entire subdivision that will have **30 CLT single-family** homes and approximately **60 multi-family CLT homes**, including duplexes and townhomes.

There are now **three organizations providing CLT homeownership opportunities in Austin**:

- Guadalupe Neighborhood Development Corporation
- Austin Habitat for Humanity, and
- Austin Housing Finance Corporation, which is a public non-profit created and governed by the City of Austin.

In addition, the Chestnut Neighborhood Revitalization Corporation is providing permanent affordability in a new condominium project through the use of long-term resale restrictions that resemble a Community Land Trust, but the organization has not retained ownership of the land.

Houston

In 2018, the City of Houston will launch a city-sponsored CLT. On June 6, 2018, the Houston Community Land Trust held its first board meeting. The Houston CLT is a city-wide, city-sponsored CLT that will provide affordable homeownership on a very large scale.

- The money that will be used to develop the Houston CLT will come from \$1.15 billion in federal funds that have been allocated to the City for affordable housing following Hurricane Harvey.
- Much of the land that will be in the Houston CLT is coming from the Land Assemblage Redevelopment Authority (“LARA”), an entity that acquires, holds, and sells property obtained by local taxing authorities through foreclosure of properties with delinquent property taxes.
- The homes in the Houston CLT will be developed by for-profit and non-profit developers who will bid for the work.
- The long-term stewardship of the Houston CLT will be conducted by the 9-member board of directors of the Houston CLT, comprised of CLT homeowners, representatives from the general public, and representatives from public agencies.
- The Houston CLT is still in its start-up phase and is seeking input from community-based organizations and community members.
- The City of Houston worked with consultants from Grounded Solutions Network to prepare a Community Land Trust Business Plan. See: <https://www.houstontx.gov/council/committees/housing/20170201/community-land-trust.pdf>.

III. Important Community Land Trust Concepts

What is a “Community Land Trust”?

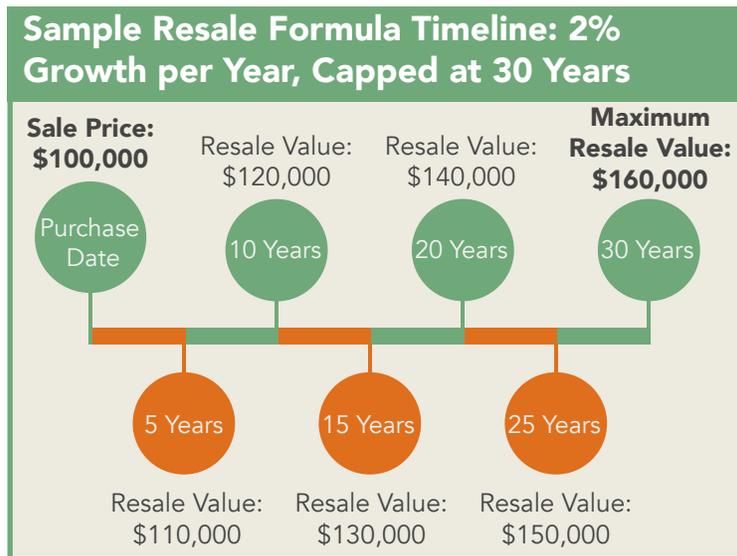
- A Community Land Trust (or “CLT”) is an affordable housing program that is used in 46 states, including Texas, to produce a supply of permanently affordable homeownership units through resale restrictions recorded in a 99-year ground lease.
- A Community Land Trust (or “CLT”) is also the name that is used to refer to the non-profit organization that runs the CLT program and that retains legal title to the land that is part of the CLT program. The CLT organization builds or rehabs the CLT homes, recruits and educates new families to become CLT homeowners, and manages the CLT program. With some CLT programs, the CLT organization is run and governed entirely by the CLT homeowners; for others, a portion of the board of directors of the CLT organization includes CLT homeowners.

What is a “CLT ground lease”?

- A CLT ground lease is the approximately 20-page lease between the CLT organization and the CLT homeowner that details all the rights and responsibilities of both parties. The CLT ground lease typically has a term of 99 years and is recorded in the public records, either in its entirety or in a summary memorandum of ground lease. The CLT ground lease sets forth the restrictions that apply to the CLT program, including:
 - › resale restrictions on the home,
 - › the types of improvements the CLT homeowners can make to the home,
 - › who can inherit the home,
 - › who pays the property taxes on the home and the land,
 - › the monthly ground lease and stewardship fees.

What is a “CLT resale formula”?

- The CLT resale formula restricts the resale price of the CLT home and is the mechanism that keeps the home affordable for future homeowners. Each CLT organization decides on the resale formula that works best for its market. Some CLT organizations pick a resale formula that allows the sales price to go up a fixed amount each year capped at a fixed number of years. Other CLT organizations choose a resale formula that tracks changes in the median family income or the Consumer Price Index in their geographic area. Yet other CLT organizations choose a resale formula that gives homeowners a fixed percentage of appreciation.



- Determining the resale formula is one of the most important programmatic decisions that the CLT organization makes.
- The resale formula is designed to strike a balance between allowing homeowners to gain some appreciation at resale while also preserving the affordability of the home for future income-eligible homeowners.
- The resale formula can be changed over time by the CLT organization going forward, but whatever resale formula is in the CLT ground lease for a specific CLT homeowner is the resale formula that governs resale for that CLT homeowner.
- For more information about choosing a resale formula, see pages 24-25.

What types of housing can be in a CLT program?

- CLT homes can be **single-family homes or multi-family homes**.
- CLT homes will look like any other home that you can purchase on the market, but the ownership structure will be different because **the land will be owned by the CLT organization** and not the homeowner and because the home is subject to resale restrictions requiring that the home be sold to an income-eligible household at a resale restricted price, as determined by the resale formula.
- CLT homes can be homes that are **newly constructed** as part of the CLT Program or they can be **existing homes** that are converted into CLT homeownership units.
- CLT homes can be together in one subdivision or scattered across a geographic service area on non-contiguous parcels of land.

Who Runs the CLT Organization?

- Some CLT organizations are governed by a volunteer board of directors pulled from the larger community. CLT homeowners will often be included as members of the board of directors.

- Some CLT organizations are governed by the CLT homeowners themselves and organized as membership-run organizations.
- Some CLT organizations start out as an organization governed by a board of directors pulled from the larger community and later convert to an organization run by the CLT homeowners themselves as members of the CLT organization.
- Cities can also run CLT programs.

What are the responsibilities of the CLT Organization?

- No matter how it is governed, the CLT organization needs to:
 - › Apply for grants and low-interest loans from government entities and banks to cover the development costs.
 - › Acquire land and build new homes, or purchase and repair existing homes.
 - › Conduct outreach to income-eligible potential homeowners to explain the CLT program and help them qualify for mortgages with third-party lenders.
 - › Apply for applicable property tax exemptions and advocate for application of the appropriate property tax appraisal methodologies.
 - › Make decisions about the resale formula and the many other discretionary features of the CLT program.
 - › Serve as the ongoing steward and property manager for the CLT homes, including collecting the monthly ground lease fee and the stewardship fee, when applicable, and monitoring the program to make sure the rules set forth in the ground lease are followed.

What are the Benefits of Using a CLT Ground Lease Instead of a Restrictive Covenant?

Some CLT programs choose to use restrictive covenants rather than ground leases as the legal mechanism to impose the resale and use restrictions on the home and land, but the vast majority of CLT programs use a ground lease and a version of the 2002 or 2011 CLT Network Model Ground Lease.

The Results of the 2011 Comprehensive CLT Survey, by Emily Thaden (see National CLT Resources, page 29) includes a helpful discussion of the different legal mechanisms used by CLT programs across the country.

There are at least **3 reasons** why a ground lease is preferable in Texas:

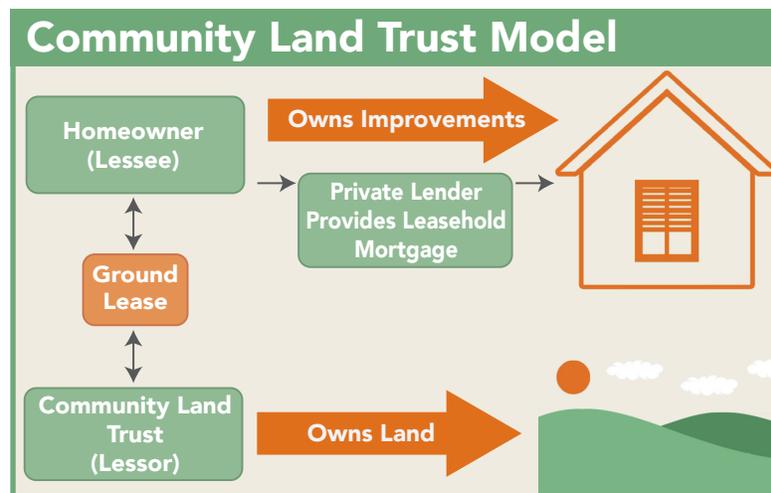
1. The Texas CLT Property Tax Exemption, which is available to local taxing entities that choose to adopt it, envisions a CLT program in which land is held by the CLT organization and leased to homeowners via a 99-year ground lease. See Texas Local Government Code, Chapter 373B.003: "Nature of

- the Trust. A community land trust created or designated under Section 373B.002 must be a nonprofit organization that is: (1) created **to acquire and hold land** for the benefit of developing and preserving long-term affordable housing in the municipality or county”; and Section 373B.005: “Ownership of Land and Housing Units. A community land trust may retain title to land it acquires and may: (1) sell housing units located on the land and **lease the land under ground leases with terms of at least 99 years**; or (2) lease housing units located on the land.”
2. The Travis Central Appraisal District is applying its CLT appraisal methodology for CLT homes and CLT land (see discussion of CLT Appraisal Methodology on pages 26-28) only to CLT programs in Austin that are using a CLT ground lease, recording the entire ground lease as an exhibit to the Deed for Sale of Improvements Only, and designated as CLT organizations by the City of Austin under Local Government Code Chapter 373B.
 3. The CLT organization plays a stronger stewardship role when there is a ground lease signed by the CLT organization and the homeowners that sets forth the rights and responsibilities of each party and that includes a monthly ground lease fee and a monthly stewardship fee. When a CLT household fails to make its ground lease payment to the CLT organization, the CLT organization is on notice that the household might be experiencing financial difficulties and can reach out to help.

For multi-family CLT homeownership units, specifically for condominium units, it might be necessary to use restrictive covenants instead of a ground lease since there is not a clear piece of land to lease to each family. The development of multi-family CLT homeownership units in Texas is still in the planning phase, and the ability of a CLT organization to continue to use ground leases for its multi-family CLT units will depend in large part on conversations with mortgage lenders and appraisal districts. The City of Houston CLT’s business plan envisions multi-family CLT homeownership units, and Guadalupe Neighborhood Development Corporation intends to develop duplex and townhome CLT homeownership units.

IV. How the Community Land Trust Program Works

- The CLT homeowner must qualify for a mortgage from a third-party mortgage lender to finance the purchase of the home and enter into a CLT ground lease with the CLT organization. See page 21 regarding CLT mortgage lenders.
- The CLT organization retains title to the land underneath the home and collects a monthly ground lease fee and a monthly stewardship fee.
- The CLT organization acts as the long-term steward of the homes, the land, and the homeowners by requiring pre- and post-purchase homeownership and financial counseling; overseeing the resale formula and the resale process; and requiring ongoing, proper maintenance of the homes.

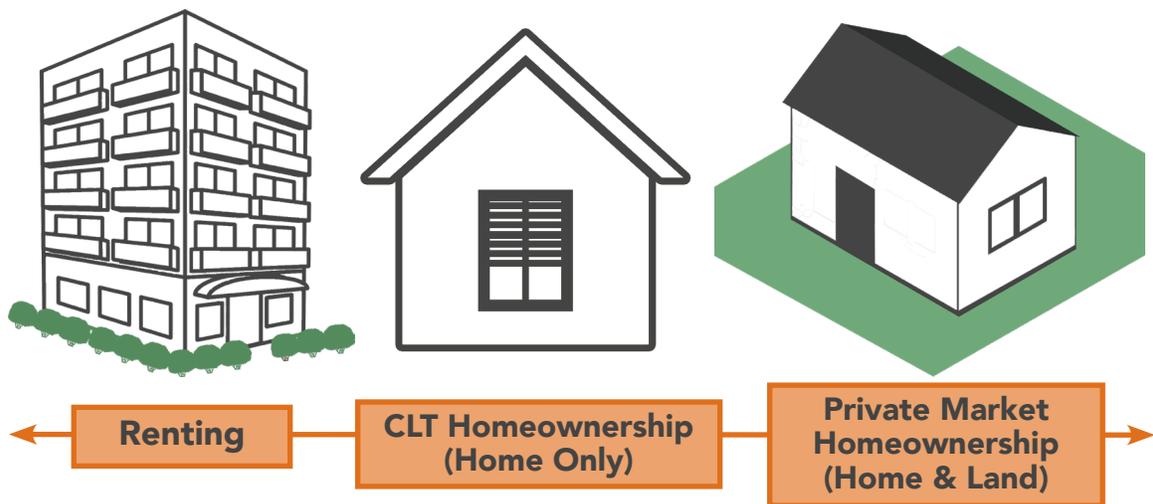


The Community Land Trust program makes homeownership affordable in three ways:

- First, the homeowner purchases the house but not the land and so only has to borrow a mortgage for the purchase price of the house. The homeowner leases the land underneath the home from the CLT organization for a minor monthly ground lease fee.
- Second, the CLT ground lease, which is recorded at the time of sale in its entirety or in a summary form, restricts the resale price of the home so that the home remains affordable for future income-eligible families.
- Third, as a result of the first two features, the property taxes are reduced. In Texas, appraisal districts should value the home for property tax purposes based on the resale formula. And they should value the land based on the leasehold value, calculated by determining the annual ground lease fee divided by the relevant capitalization rate for rent-restricted affordable housing. See the further discussion of property taxes at pages 26-28.

V. How Is CLT Homeownership Different From and Similar to Other Types of Homeownership?

The CLT homeowner has legal title to her home and is able to build equity in her home (unlike a renter) but is subject to resale restrictions that restrict the price at which she can sell her home. The resale restrictions cap the amount of equity from appreciation that a CLT homeowner can build up in her home.



The CLT homeowner also learns the responsibilities of owning a home and benefits from **lower property taxes** due to the lower appraised value of CLT homes in Texas. The CLT homeowner can benefit from the stability and predictability of being a homeowner (as opposed to being subject to a landlord's ability to raise rents or sell the property entirely). Finally, CLT homes can act as a stepping stone between renting and unrestricted private market homeownership.

The CLT Program Allows Public Assistance to Impact More Families

The CLT program enables nonprofit organizations to preserve the long-term affordability of homes in markets where the price of land is increasing rapidly and displacing low-income families. This protection of land and homes for **perpetual use by low-income families** is a critical part of the CLT program.

Local governments benefit from the CLT model because any subsidy given to the CLT nonprofit organization and the initial round of CLT homeowners—such as down-payment assistance, construction financing, and land acquisition funds—**will remain in the community and available to future homeowners in perpetuity**. Unlike many affordable housing programs where the assistance and subsidies

provided to the initial homeowner are subsequently lost to the market when the home is resold, the resale restrictions that are the heart of the CLT model ensure that both the initial homeowner and future generations of homeowners will benefit from the initial round of assistance and subsidies. In addition, through the use of ongoing financial counseling and maintenance requirements and the nonprofit organization's right of purchase, **the CLT model has proven successful in reducing foreclosure rates among low-income households.**

“

Unlike many affordable housing programs where the assistance and subsidies provided to the initial homeowner are subsequently lost to the market when the home is resold, the resale restrictions that are the heart of the CLT model ensure that both the initial homeowner and future generations of homeowners will benefit from the initial round of assistance and subsidies.

The CLT Program Contains a lot of Flexibility

There is a lot of room for discretion when setting up a CLT program. Each CLT program differs, and those differences are captured in the ground lease between the CLT organization and the CLT homeowner. The template CLT ground leases from Grounded Solutions Network should be tailored to meet the specific programmatic needs of each CLT organization. The sample Texas CLT ground lease contained in Appendix A reflects the programmatic decisions made by that particular nonprofit affordable housing developer.

Here are some of the programmatic decisions that each CLT organization must make, with references to where the corresponding language is found in the sample ground lease and exhibits in Appendix A:

- 1. Resale Formula:** CLT homeowners cannot sell their homes to anyone they choose at any price, but must instead sell at the resale formula price to an approved, income-eligible homeowner. The resale formula price is determined through a resale formula selected by the CLT organization.

In the sample Texas ground lease included in Appendix A, the CLT organization decided on a resale formula that permits the CLT homeowner to earn up to 2% per year in appreciation, capped at 30 years. See Section 9.10. The corresponding exhibit, Exhibit 9.10, is the Formula Price Schedule that sets out the specific resale prices permitted over a thirty-year period for a home with an initial sales price of \$100,000 and a resale formula of 2%, capped at 30 years. For more information about choosing a Resale Formula, see pages 24-25.

- 2. Inheritance:** The template CLT ground lease from Grounded Solutions Network and the sample Texas ground lease, Section 9.3, permit immediate heirs (defined as a spouse, children, grandchildren, and parents) to inherit and occupy the home regardless of income, as long as they enter into a new ground lease, and permit other heirs to inherit and occupy the home as long as they are income-eligible and enter into a new ground

lease. If the CLT organization has used HOME funds to build or rehab the home, federal HOME funds regulations require that the home be occupied for the first 15 years only by a household at or below 80% of the area median income. To comply with that funding requirement, a CLT organization can use the Addendum to Ground Lease for Sales with HOME Funds in Appendix A.7.

- 3. Purchase Option:** The CLT organization reserves the option to purchase the home when CLT homeowners indicate their intent to sell their home. See sample Texas ground lease, Section 9.6. In the instance where the CLT organization chooses to purchase the home, the CLT organization will purchase the home at the permitted resale price and will then turn around and sell the home to a newly-approved, income-eligible CLT homeowner. Alternatively, the CLT organization may choose not to exercise its purchase option and instead allow the CLT homeowner to sell directly to a newly-approved, income-eligible CLT homeowner at the permitted resale price. In the template lease, purchasers of CLT homes may not make more than 80% of the area median income for their household size.
- 4. Ownership Restrictions:** CLT homeowners must occupy the CLT home as their primary residence for a certain amount of time each year. The sample Texas ground lease imposes a minimum nine-month occupancy requirement. CLT organizations can decide whether to permit CLT homeowners to sublease part of their homes. See sample Texas Ground Lease, Sections 4.4 and 4.5.
- 5. Limitations on Improvements:** To ensure the continued affordability of the home and the quality of the improvements, CLT homeowners cannot make improvements to the CLT home over a threshold dollar amount without prior permission from the CLT organization. CLT organizations can decide how they want to handle improvements and can also decide whether to allow homeowners to recapture the value of approved improvements at sale. See sample Texas ground lease, Section 6.3. See also pages 24-25 about choosing a Resale Formula.
- 6. Pre-purchase Homeownership Counseling:** Pre-purchase homeownership counseling, including CLT-specific counseling, is required of every new CLT homeowner to ensure that each homeowner fully understands and agrees to each of the restrictions contained in the ground lease. See sample Texas ground lease, Exhibit 1.
- 7. Permission for Refinancing or Additional Mortgages:** CLT homeowners must obtain written permission from the CLT organization before refinancing their mortgage or obtaining any additional mortgages or loans against the equity in the home. See sample Texas ground lease, Section 7.3

- 8. Monthly Ground Lease and One-Time Lease Initiation Fee:** CLT homeowners pay a monthly ground lease fee to the nonprofit CLT organization for use of the land. The monthly ground lease fee is typically set considerably below the market value of the land. The sample Texas ground lease fee sets the monthly ground lease fee at \$25 per month. See sample Texas ground lease, Sections 5.1 through 5.7. It is also common to have a monthly ground lease fee of \$50 per month to help the CLT organization fund its CLT-related operations. Some CLT organizations also collect a one-time lease initiation fee of 1%-3% of the purchase price to cover the CLT organization's administrative costs related to the sale. The sample Texas ground lease sets the one-time lease initiation fee at 3% of the purchase price, to be paid at closing. See sample Texas Ground Lease, Section 5.1
- 9. Optional Monthly Stewardship Fee:** Some CLT programs require homeowners to pay a monthly stewardship fee to the CLT organization. The sample Texas ground lease sets the stewardship fee at \$30 per month. The monthly stewardship fee is kept by the CLT organization in a Stewardship Fee Reserve account for that particular home and is available for ongoing maintenance and repairs to the major systems in the home. At the time of sale, any remaining funds in the Stewardship Fee Reserve account for that home will remain in the reserve account for that home and will not be returned to the CLT homeowners. See sample Texas ground lease, Sections 6.7 through 6.10 and Exhibit 6.7.
- 10. Repair Requirements at Resale:** Most CLT organizations conduct an inspection at the time of the home's resale and require the selling CLT homeowner to pay for repairs, ensuring that the home is returned to essentially the same condition as when the CLT owner purchased it. If the CLT organization uses a monthly stewardship fee and there is money left in the homeowner's stewardship fee reserve account, these repairs can be covered by money remaining in that account. See sample Texas Ground Lease, Section 9.12 and Exhibit 9.12.
- 11. Property Taxes:** Most CLT organizations choose to pass to CLT homeowners the responsibility for paying the annual property taxes on both the CLT home and the leased land underneath the home. See sample Texas Ground Lease, Sections 8.1 through 8.5. Property taxes on CLT land and CLT homes should be considerably lower than property taxes on market rate land and homes because of the resale and use restrictions imposed on CLT land and homes. For more information about property taxes on CLT homes and land in Texas, see pages 26-28.

VI. Structural Decisions When Creating a CLT Program

When creating a CLT, there are at least five important initial decisions the organization must make.

Initial Community Land Trust Decisions

1. Decide whether to include the CLT program as part of an existing nonprofit organization or form a new separate nonprofit organization.
2. Decide whether to seek Community Housing Development Organization (“CHDO”) designation for the existing or new nonprofit organization to improve access to federal funding.
3. Decide whether to create a “classic” CLT with self-governance by the CLT homeowners or a CLT with governance by a board of directors that includes but is not limited to CLT homeowners.
4. Decide what staff to hire or assign to run the CLT program.
5. Decide on a strategy and budget to acquire land and construct or renovate as many affordable homes as possible.

1. Separate Nonprofit Organization or Part of Existing Nonprofit?

One of the first choices an organization setting up a CLT must make is whether the CLT program will be added to the services of an existing nonprofit organization or be run by a separate nonprofit organization. When deciding whether to set up a separate nonprofit organization or add the CLT program to the existing organization, it is a good idea to seek guidance from a lawyer who can evaluate the specifics of your situation. Nonprofit organizations in Texas looking for free legal assistance may contact Texas Community Building with Attorney Resources (“Texas C-BAR”) for help in finding a pro bono attorney. For more information and to apply for legal assistance through Texas C-BAR, see www.texasbar.org. For a sample set of Texas nonprofit bylaws see Appendix E.

The chart on page 19 highlights the differences between these two options.

2. Obtaining a “CHDO” designation

A “CHDO” designation means that the federal government recognizes the nonprofit as a Community Housing Development Organization. This designation can enable the organization to get priority in funding from the federal government. At least 15% of HOME Investment Partnerships Programs (“HOME”) funds from the U.S. Department of Housing and Urban Development, as allocated to and distrib-

uted by state and local jurisdictions, must be set aside for CHDOs to support the construction and rehabilitation of affordable housing.

In order to qualify as a CHDO and be eligible for these funds, at least one third of the board of directors of the nonprofit corporation must be low-income or live in a low-income neighborhood. In addition, the nonprofit organization must demonstrate that it has the staff capacity and financial management capacity and accountability to build, acquire, or rehabilitate affordable housing and carry on other activities eligible for HOME funds.

Having a CHDO designation will also qualify the organization for CHDO-specific property tax exemptions in Texas.

Separate Nonprofit Organization or Part of Existing Nonprofit?		
	Separate Nonprofit	Part of Existing Nonprofit
Impact on Budget	Financial decisions related to the CLT will impact only the CLT program.	Financial decisions related to the CLT could impact the organization's other affordable housing programs.
Funding	Need to raise funds from scratch for the CLT.	May be able to leverage existing funds of the nonprofit organization to help with the CLT.
Staff	Will need to hire new staff with knowledge and expertise to run the CLT.	Can use existing staff's knowledge and expertise; will need to supplement or re-assign staff to run the CLT.
Governance	Will need to recruit new board of directors.	Uses existing board of directors.
Goodwill of Existing Name	Need to create goodwill and reputation for the new organization.	Can rely on goodwill and reputation of the existing nonprofit organization.
CHDO Capacity	Will need to demonstrate experience and capacity to obtain CHDO designation.	May already have CHDO designation in place.

3. Governance of the CLT Organization

While the classic CLT model is for the nonprofit organization to be governed by both a board of directors and a general membership made up of the CLT homeowners, it is not a legal requirement that nonprofit organizations administering a CLT program include members. Under the classic CLT model, self-governance by the CLT homeowners is a core principal. Accordingly, the classic model provides

that each CLT homeowner will automatically be a member of the nonprofit organization with the right to vote on major decisions, including and perhaps most importantly decisions related to the resale formula, and also the right to serve on and elect the board of directors.

For some organizations, especially existing community-based organizations that are already running other non-CLT affordable housing programs, it may instead make more sense to allocate a certain number of existing or additional board seats for CLT homeowners, thereby giving the CLT homeowners representation on the governing board of the nonprofit organization, without adding a general membership component to governance.

4. Hire or Assign Staff to Administer the CLT Program

As with any affordable housing program, the staff of the nonprofit organization are the key to a successful CLT program. For example, staff need to be able to run development pro formas for the land and construction costs and run the development process; market the program to income-eligible families and work with those families to prequalify them for third-party mortgages; apply for grants and low-interest loans to help with acquisition and construction costs; and apply for applicable property tax exemptions and advocate for application of the appropriate property tax appraisal methodologies.

5. Purchasing Land and Homes for the CLT Program

One of the critical pieces of advice that existing CLT organizations give to organizations considering starting a CLT program is to purchase as much land and as many existing homes as possible while costs remain affordable.

CLT organizations acquire land and property in different ways:

- Purchase vacant lots or lots with homes at market value
- Acquire lots through city initiatives like land banks, land transfer programs, or tax-foreclosure sales
- Receive private donations of lots and homes

In addition to acquiring new land and homes, it is also worth thinking about whether it makes sense for an organization to convert some of its existing rental homes into CLT homeownership homes. Specifically, some organizations consider whether the tenants who are currently renting homes from the nonprofit organization can qualify for a mortgage and afford the switch from renting to CLT homeownership.

This interactive graphic from Grounded Solutions Network is a fantastic resource for getting started with a Community Land Trust: <http://groundedsolutions.org/start-upclthub/>.

VII. Mortgage Loans for CLT Homeowners

Most CLT organizations do not provide mortgages and instead require their CLT homeowners to obtain third-party mortgages for the purchase of their homes. Some of these mortgages are held as a portfolio loan, and some are sold on the secondary market.

Fannie Mae has a Community land Trust Ground Lease Rider (Fannie Mae Form 2100, 3/06, rev. 12/10) that it requires be filed along with the other closing documents: https://www.fanniemae.com/content/guide_form/2100rev.pdf.

For a helpful summary of the Fannie Mae Rider produced by the UT Entrepreneurship and Community Development Clinic, see Appendix A.6.

The CLT Network has a two-page handout describing the advantages to lenders of providing first mortgage loans to CLT homeowners: <http://cltnetwork.org/wp-content/uploads/2014/01/Advantages-of-Mortgage-Lending-to-CLTs.pdf>

The Results of the 2011 Comprehensive CLT Survey, by Emily Thaden (see National CLT Resources, page 29) includes a good discussion of the mortgage lending landscape for CLT programs across the country.

Mortgage products will differ by lender in terms of interest rates, terms, underwriting standards, amount of down-payment required, and other important details.

Caliber Home Loans (formerly known as BANC Home Mortgage of Santa Rosa, Bank of California) is offering mortgages to GNDC's CLT homeowners in Austin and has been easy to work with. Here is contact information for the individual at Caliber Home Loans who is working with GNDC on its CLT mortgages:

Brian Morse
Direct: 707-303-2913
Fax: 844-243-3851
brian.morse@caliberhomeloans.com

VIII. Legal Documents Used in a Community Land Trust

These documents are available for download at: <https://law.utexas.edu/clinics/2018/07/01/community-land-trust-toolkit/>.

Appendix A: Legal Documents

1. [CLT Ground Lease](#) (sets forth the rights and responsibilities of the CLT organization and the CLT homeowner and the resale and use restrictions that are imposed on the CLT homeowner, modified [Grounded Solutions Network](#) template documents)
2. [Summary of CLT Ground Lease](#)
3. [CLT Ground Lease Exhibits](#) (includes details specific to particular CLT homeowner, modified [Grounded Solutions Network](#) template documents)
4. [Summary of CLT Ground Lease Exhibits](#)
5. [Fannie Mae CLT Rider](#) (for Fannie Mae mortgages)
6. [Summary of Fannie Mae CLT Rider](#)
7. [Addendum to Ground Lease for Sales with HOME Funds](#) (if HOME funds were used to develop the property, this addendum will have to be used to ensure that only households at or below 80% of area median income occupy the home for the first 15 years)
8. [Summary of Addendum to Ground Lease for Sales with HOME Funds](#)
9. [Grounded Solutions Network Model Ground Lease \(2011\)](#) (including sample language for an appraisal-based resale formula, a fixed-rate resale formula, and an index-based resale formula)

Appendix B: Sales Documents for a Texas CLT Sale (modified Texas Real Estate Commission documents)

1. [Deed for Sale of Improvements Only](#) (general warranty deed modified to reflect that CLT sale conveys title to the home only, not the land)
2. [Summary of Deed for Sale of Improvements Only](#)
3. [Instructions for Completing TREC New Home Contract](#) (suggested language to be typed into the TREC form to make clear that sales contract is for home only and that home bears resale and use restrictions as set forth in the ground lease)
4. [Addendum with Outline of Ground Lease, for TREC New Home Contract](#) ("Other" addendum to be added to the TREC New Home Contract summarizing key provisions of ground lease)
5. [Closing Checklist for CLT Sale](#) (to help ensure the Deed for Sales of Improvements Only is filed in the public records with the Ground Lease and Exhibits attached)
6. [Closing Instructions Letter for CLT Sale](#) (sample letter to title company describing a CLT closing)

Appendix C: Documents Related to Appraisal Methodology Used by Travis Central Appraisal District for CLT Homes and CLT Land

1. [Discussion with Travis Central Appraisal District re Community Land Trust Valuation](#)

Appendix D: Materials Related to the City of Austin's CLT Property Tax Exemption Ordinance (in 2012, the City of Austin adopted a CLT Property Tax Exemption allowing designated CLT organizations to have a 100% property tax exemption from City of Austin property taxes for CLT land)

1. [Overview: Community Land Trust Policy](#) (with two attachments: The Community Land Trust Report by the City of Austin, which we have a link to under CLT National Resources, and The City-CLT Partnership report)
2. [Executive Summary of Senate Bill 402, from Texas Legislative Session 82\(R\)](#)
3. [Texas Senate Bill 402](#)
4. [City of Austin's Ordinance Adopting a CLT Property Tax Exemption](#)

Appendix E: Sample Texas Bylaws for CLT Organization (modified Texas C-BAR Nonprofit Bylaws)

1. [Sample Texas C-BAR Bylaws for Texas Non-Profit Organization Without Members](#)
2. [Suggested CLT Language to Add to the Purpose Clause of the Bylaws](#)
3. [Sample CHDO Language to Add to Bylaws](#)

IX. Understanding and Selecting Resale Formulas

The resale formula is the central mechanism to the CLT model and is how the CLT model ensures affordable homeownership in perpetuity. As a result, it is critical that both the governing body of the nonprofit organization and prospective CLT homeowners take the time to understand how the resale formula works and how it will impact them. The resale formula is determined by the governing body of the nonprofit organization—either the board of directors or, where applicable, the CLT members—and is recorded in the ground lease, and also as an exhibit to the ground lease. See sample Texas ground lease, Article 9 and Exhibit 9.10, Appendix A. It is essential that future and current CLT homeowners receive adequate initial and ongoing counseling on the resale formula so that they understand the possibilities and the limitations that it imposes on their household’s ability to build wealth through their home.

How Does the Resale Formula Work?

The ground lease contains the resale formula that specifies how the resale price will be determined for each CLT home. Pursuant to the ground lease, the nonprofit CLT organization retains an option to purchase the home from the CLT homeowner when the owner is ready to sell the home. Or, the nonprofit organization can choose not to exercise its purchase option and instead monitor the sale of the home from the departing CLT homeowner directly to an approved new CLT homeowner. Either way, each CLT home’s sales price is determined by applying the resale formula. The CLT resale formula is designed to provide homeowners who are selling their homes a fair return on their investment, while providing future homebuyers housing at an affordable price. The resale formula does this by limiting the future sales price of the home.

Resale Formula Objectives

- Guarantee access to affordable homeownership for future low-income residents.
- Provide a fair return for the current homeowner on the owner’s investment.
- Promote long-term occupancy and adequate maintenance by homeowners.

What are the Main Objectives of the Resale Formula?

The main objectives of a CLT resale formula are to:

1. guarantee access to affordable homeownership for future low-income residents;
2. provide a fair return for the current homeowner on the owner's investment; and
3. promote long-term occupancy and adequate maintenance by homeowners.

Designing a resale formula that is easily understood by both the CLT staff and the homeowners is very important. The easier the resale formula is to understand and to calculate the lower the administrative burden on the CLT and the lower the risk of any future dispute between the CLT and the homeowner. Adopting a simple-to-follow resale formula may also make it easier for the staff of the local appraisal district to appraise the CLT home appropriately. See *Proper Appraisal Methodology for CLT Home and Land*, at pages 26-27. The board of directors—or the membership of the CLT—should take its time to come up with a resale formula that works best for the CLT program overall.

Guidance for Selecting a Resale Formula

The resale formula is designed to keep the resale price within a certain percentage of the original purchase price to keep the home affordable for future low- and moderate-income families. The National CLT Network recommends three different possible resale formulas: (1) appraisal-based formulas, (2) fixed-rate formulas, and (3) indexed formulas. Each of these formulas relies on the calculation of a base price. The base price is the sum of the buyer's down payment and the first mortgage loan that the buyer receives. The base price could also include any subsidies that the homebuyer receives from the CLT organization and third parties. Whether or not the base price should include any subsidies depends on whether or not the subsidy must be repaid. If the subsidy is a deferred loan that the buyer must repay, then this subsidy should be included in the base price. If the subsidy does not need to be repaid by the buyer, then the subsidy should not be included in the base price, allowing future homebuyers to also benefit from this subsidy.

Grounded Solutions Network has some very helpful resources for understanding and selecting resale formulas. The 2011 National CLT Network's Technical Manual has an excellent chapter on Resale Formula Design: <http://cltnetwork.org/wp-content/uploads/2014/07/12-Resale-Formula-Design.pdf>. This sixty-minute video series is helpful: <https://groundedsolutions.org/resources/#resales>, and this document is also very clear and helpful: <https://affordableownership-4977.kxcdn.com/wp-content/uploads/2015/03/The-Balancing-Act-Resale-Formula-Options.pdf>.

X. Property Tax Treatment of the CLT Home and Land in Texas

Proper Appraisal Methodology for CLT Home and Land

Typically, CLT homeowners pay the property taxes for both the CLT home that they own and the CLT land that they lease pursuant to the ground lease. To prevent these property taxes from making CLT homeownership unaffordable, it is critical that the local appraisal district value the CLT home to reflect the resale restrictions and the CLT land to reflect the below-market lease payments being made to the CLT organization. In Texas, efforts were made in the 2017 Legislative Session, and will be renewed in the 2019 Legislative Session, to codify a CLT-specific appraisal methodology across Texas. In the meantime, it is important to work with your local appraisal district to educate the appraisal officials about the CLT Program and to advocate for a beneficial appraisal methodology.

The Travis Central Appraisal District has implemented an appraisal methodology that works well for CLT homeowners in Travis County and the City of Austin:

CLT Homes

The CLT homes are valued at the initial sales price for the first year and at the sales price limits in the resale formula for each subsequent year.

For example, if a CLT homeowner purchases a home for \$100,000 with a 2% annual increase resale formula, then the home will be appraised at \$100,000 in year 1, \$102,000 in year 2, and \$104,000 in year 3, with a cap of \$160,000 in year 30 and beyond. The appraisal district looks to the specific resale formula for that home, included in Exhibit 9.10, to see how to appraise the home.

CLT Land

The CLT land is appraised using an income-based appraisal methodology and a capitalization rate of 2%, as follows:

- Monthly ground lease fee x 12 months = annual ground lease fee
- Annual ground lease fee divided by 2% capitalization rate = appraised value of CLT land
 - › Example: \$25/month ground lease fee x 12 = \$300 annual ground lease fee
 - › \$300 divided by .02 = \$15,000 appraised value of CLT land

The Travis Central Appraisal District requires CLT organizations in the City of Austin to be designated as a CLT under Section 373B of the Local Government Code before it will apply the appraisal methodology described above. See CLT-Specific Property Tax Exemptions in Texas, below, for a discussion of the local designation process.

Fannie Mae's underwriting guidelines for CLT properties are instructive: <https://www.fanniemae.com/content/guide/sel041514.pdf#page=649>.

CLT Homeowner Eligibility for Homestead Property Tax Exemptions

A CLT homeowner is eligible for a homestead property tax exemption in Texas. This tax exemption lowers the property taxes that a homeowner pays for a home occupied as the primary residence. The homeowner qualifies for this exemption by filing a homestead tax exemption form with the local county appraisal office. This form is available at www.window.state.tx.us/tax-info/taxforms/50-114.pdf. Additional exemptions are available for seniors, persons with disabilities, and disabled veterans.



CLT-Specific Property Tax Exemptions in Texas

As of 2012, CLT organizations in Texas are eligible for a 100% property tax exemption on the land held in the CLT if: (1) any of the local taxing entities adopt a CLT-specific property tax exemption, and (2) the local government designates the organization as a CLT under Section 373B of the Local Government Code. Discretion is left to individual taxing entities to designate CLT entities and grant this exemption. The City of Austin (but not yet Travis County, AISD, or Austin Community College) has adopted a 100% exemption for land owned by a CLT organization designated by the City.

To qualify under Section 373B it is important to note that Section 373B.006 imposes additional income restrictions on CLT homeowners as follows:

1. A CLT may sell CLT homes only to families with incomes at or below 80% of the area median income, and at least 25% of the CLT homes must be sold to families with incomes at or below 60% of area median income.
 - For CLT lots in a single subdivision or in the same geographic area, 20% of the CLT homes may be sold to families with incomes of up to 120% of area median income.
2. A CLT may rent CLT homes only to families with incomes at or below 60% of area median income.
 - For CLT lots in a single subdivision or in the same geographic area, 20% of the CLT homes may be rented to families with incomes of up to 80% of area median income.

For more information about the statewide enabling legislation pursuant to which individual taxing authorities may adopt a CLT property tax exemption and designate a CLT, see Texas Local Government Code 373B and Texas Tax Code 11.1827.

In addition, Appendix D to this toolkit contains information used by a nonprofit affordable housing provider in Austin to ask the City of Austin to adopt its CLT property tax exemption.

Overview of CLT Property Taxation in Texas

Home	Land
	
Appraisal Methodology: Market Value (TX Tax Code 23.01) <ul style="list-style-type: none">• Reduced market value reflecting sales price limitations (23.21(d)) Example from TCAD: Initial sales price and resale formula price schedule	Appraisal Methodology: Market Value (TX Tax Code 23.01) <ul style="list-style-type: none">• Reduced market value reflecting use restrictions (23.21(c)) Example from TCAD: Annual ground lease fee divided by 2% capitalization rate (e.g., \$300/year divided by 2% = \$15,000)
Tax Exemptions: <ul style="list-style-type: none">• Homestead exemption and other applicable exemptions (Tax Code 11.13)	Tax Exemption: <ul style="list-style-type: none">• CLT exemption: 100% exemption from taxing units adopting the exemption (Tax Code 11.1827)

XI. Helpful CLT Resources

National CLT Resources

Here are some resources to help you gain a better understanding of the CLT model and to provide support for your work as a CLT program. Most of these resources are not specific to Texas, so you must make sure to modify any sample forms to comply with Texas law.

- Grounded Solutions Network is an outstanding organization that provides support to CLTs across the county through trainings and online resources. They also have an annual CLT conference with helpful panel discussions and networking. They have a large number of very helpful resources and templates available at: <http://groundedsolutions.org/>.
- Burlington Associates is a consulting firm specializing in affordable housing and CLTs. Burlington Associates also offers consulting services for nonprofit organizations and cities needing help with the business planning part of starting a CLT program. The firm has written publications and interactive tools, such as the Interactive Resale Formula Calculator, available through the firm's website: www.burlingtonassociates.com.
- Results of the 2011 Comprehensive CLT Survey, by Emily Thaden, The Housing Fund, Vanderbilt University, in partnership with the National CLT Network and the Lincoln Institute of Land Policy, January 11, 2012: <https://cltnetwork.org/wp-content/uploads/2014/01/2011-Comprehensive-CLT-Survey.pdf>.

Texas CLT Resources

Here are some Texas-specific resources for setting up a CLT:

- Guadalupe Neighborhood Development Corporation ("GNDC"): Since 2011, GNDC has completed six individual CLT sales in Central East Austin. GNDC is developing a subdivision that currently has 4 occupied single-family CLT homes with 8 more in development, and that will eventually include a total of 30 single-family CLT homes and 60 multi-family CLT homes. For more information about GNDC and its CLT and other affordable housing programs, visit GNDC's website at <http://www.guadalupecdc.org>.
- The Community Land Trust Report, prepared by the Office of Neighborhood Housing and Community Development, City of Austin, details the use of Community Land Trusts under Texas law and the financial policies of the City of Austin. This report is available by clicking on the final link, Report-Weiss, on http://community-wealth.org/_pdfs/articles-publications/clts/.
- Houston Housing and Community Development Department's Community Land Trust Business Plan, by Grounded Solutions Network, December 2016: <https://www.houstontx.gov/council/committees/housing/20170201/community-land-trust.pdf>.
- To apply for pro bono legal assistance to set up a CLT in Texas, please contact the Entrepreneurship and Community Development Clinic at the University of Texas School of Law: <https://law.utexas.edu/clinics/ecdc/>.

XII. FAQ from Potential CLT Homeowners

Why would I want to purchase a CLT home if I can't benefit from the full increase in market value?

The CLT program isn't for everyone. If you can afford to purchase a home on the market, then that might be the best option for you. The advantage of a CLT home is that it will be priced so that it is affordable, which makes it easier for low- and moderate-income families to access homeownership and also decreases the chance of foreclosure. In exchange for the opportunity to purchase an affordable home, CLT homeowners share the equity from any appreciation that builds up in the home with future homeowners. CLT homeowners trade affordability and access to homeownership for full equity if the property appreciates. At the same time, CLT homeowners are shielded from some of the dangers of the real estate market: their initial purchase price and their monthly housing costs are carefully calculated by the CLT organization to be affordable; the CLT organization collects a stewardship fee to help with long-term maintenance of the home; and the property taxes are affordable and considerably below market because of the resale and use restrictions.

Can homeowners who are struggling with high property taxes benefit from joining a CLT?

It is possible for a CLT organization to purchase property from a homeowner who is struggling with high property taxes and who otherwise risks losing her home through tax foreclosure. If the CLT organization has available funds, it could purchase the home for the amount of the outstanding taxes and put in whatever additional capital is needed to make repairs to the home. The homeowner could stay in the home, becoming a CLT homeowner, and would have to enter into a ground lease, subjecting the home and land to resale and use restrictions. The homeowner might be giving up considerable equity in the home but that might be the right choice if the alternative is losing the home altogether.

If I make improvements to my CLT home, will I be able to get that money back?

The answer depends on the resale formula in the ground lease. Some resale formulas include a return to the CLT homeowner that specifically includes money spent on pre-approved improvements to the home. In contrast, some resale formulas set an annual increase in equity without recognizing any improvements made to the home. It is important for the CLT homeowner to understand her particular resale formula.

Can my children inherit the home after I die?

There is a lot of flexibility in the CLT program regarding inheritance. Many CLT organizations feel that inheritance is an important element of homeownership. The template CLT ground lease from Grounded Solutions Network permits immediate heirs (defined as a spouse, children, grandchildren, and parents) to inherit and occupy the home regardless of income, as long as they enter into a new ground lease, and permits other heirs to inherit and occupy the home as long as they are income-eligible and enter into a new ground lease.