CLTs & SB 1943 for Heir Property: Community Preservation Tools

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Topics

Community Land Trust

Heir Property and the Homestead Tax Exemption
CLT

- Common features
- Tax treatment in Texas
- Organizational structure in Texas and Dallas
- Starting up a new CLT
CLT: Growing in Texas

Austin
• Austin Habitat for Humanity
• City of Austin/Austin Housing Finance Corporation
• GNDC

Houston
• City of Houston CLT
• 5th Ward Community Revitalization Corporation

Amarillo, Dallas, Lubbock and beyond
Combatting Displacement of Vulnerable Communities
Community Land Trust (CLT)

Affordable housing program that creates permanently affordable homeownership units

- resale restrictions
- long-term ground leases.
- legal title to land typically held by a nonprofit organization (also called a CLT) that also manages program and recruits new homeowners
<table>
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<tr>
<th>Increasing</th>
<th>Increasing the supply of permanently affordable homes for low- and moderate-income families, especially in areas with rapidly rising property values</th>
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<td>Increasing</td>
<td>Increasing homeownership rates</td>
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<td>Capturing</td>
<td>Capturing the value of public investment for long-term community benefit</td>
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| Maximizing | Maximizing the impact of limited nonprofit and government resources being invested in affordable homeownership  
  • These are also the purposes of CLTs under Texas law |
How a CLT Works

CLT Ground Lease

- A 99 year land lease between the CLT organization and the CLT homeowner
  - Recorded in the public records, either in its entirety or in a summary memorandum of ground lease
- Typical provisions
  - resale restrictions on the home
  - 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
  - fees: monthly ground lease and stewardship fees
CLT Resale Formula

The CLT resale formula restricts the resale price of the CLT home

- Set by a CLT organization – based on the local market

- Examples of formulas
  - Increase by a fixed amount each year capped at a fixed number of years
  - Tracks changes in the median family income or the Consumer Price Index in geographic area
  - A fixed percentage of appreciation
Sample Resale Formula Timeline: 2% Growth per Year, Capped at 30 Years

Sale Price: $100,000

- Resale Value: $120,000 (10 Years)
- Resale Value: $140,000 (20 Years)
- Maximum Resale Value: $160,000 (30 Years)

- Purchase Date
- 5 Years
- 15 Years
- 25 Years

Resale Formula
Texas Local Government Code Chapter 373B
• Defines a CLT and enables a city or county to create or designate CLTs at the local level

Texas Tax Code § 11.1827
• Enables tax exemptions for CLTs

Texas Tax Code § 23.21(c) & (d)
• Sets out rules for appraisal of land or housing unit leased by a CLT
• Sets out rules for appraisal of home that is sold as part of a CLT
CLT Tax Appraisal

Current

Texas Tax Code, Section 23.21(c): The appraisal district must take into reduced market value when appraising a qualified CLT leased land and home.

Texas Tax Code, Section 23.21(d): Sets the appraisal of the (clt sale) home based on the price in the resale restriction if the restriction limits resale to an income-qualified family and is recorded in real property records with a term of at least 40 years.

- Example: The Travis County Appraisal District bases the appraisal of a CLT home on the resale restricted price set in the ground lease and recorded in the deed records. If a home cannot be sold for more than $100,000, the home is appraised at $100,000.

SB 113, Eff. September 1st

Amends Texas Tax Code 23.21 (c)

- When appraising CLT leased land, appraisal district must use the income-method of appraisal.
  - “(1) take into account the uses and limitations applicable to the property, including the terms of the lease applicable to the property, for purposes of computing the actual rental income from the property and projecting future rental income; and
  - (2) use the same capitalization rate that the chief appraiser uses to appraise other rent-restricted properties.”

Adds section (c-1) to Texas Tax Code 23.21 which applies similar requirements to leased housing units.

Amends Texas Tax Code 23.21 (d) to prohibit an appraisal district from appraising a home higher than the price that it can sell for under an eligible land restriction.
Tax Treatment: How it Works for Austin/TCAD

GNDC: Tax Savings to Homeowners

- Market rate tax bill adds $495.50 each month to mortgage payment.

- CLT tax bill adds $170.42 each month to mortgage payment.

Texas Laws - CLT

Texas Local Government Code Chapter 373B

• City or County may adopt an ordinance or order that creates or designates CLTs

• If nonprofit
  • 501(c)(3) nonprofit organization (or a LP or LLC 100% controlled by one)
  • created to acquire and hold land for the benefit of developing and preserving long-term housing
  • sells or rents home to families that meet certain median family income requirements in the homes sold and rented by the CLT

Texas Business Organizations Code, Chapter 1-12,20, 22

• Rules for forming and operating a nonprofit corporation
The Classic CLT and Variations

Classic CLT
- Non-profit organization
- Defined service area
- Membership: Homeowners

Variations
- Program of a nonprofit
- Program of a city
- City, regional, state-wide
- Non-membership
- Tri-partite board
Section 2 – Pre-application Questionnaire
Please answer these questions before applying.
If you answered NO to any question, please contact albert.gonzalez@dallascityhall.com for more information before proceeding.

1. Is the CLT a non-profit 501(C)(3) whose mission is related to development and preservation of affordable housing?
2. Are at least 1/3 of the board members of the CLT representatives of low-income communities, low-income beneficiaries from the community or residents who live in a CLT property?
3. Does the CLT have adopted articles of incorporation, or a similar governing document, stating that it has the purpose to acquire and hold land for the benefit of developing and preserving long-term affordable housing in the City of Dallas, as required by Chapter 373B, as amended?
4. Does the CLT identify in its articles of incorporation or a similar governing document, where on discontinuance of the organization by dissolution or otherwise that the assets related to its CLT activities be transferred to the City of Dallas, the State of Texas, the United States, or a similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986 and designated as a CLT by the City of Dallas?
5. Does the staff or hired consultant have at least 2 years’ experience developing and managing affordable housing?
6. Does the CLT have a business plan with proformas?
7. Does the CLT have an established ground lease with resale formula?
8. Do the Applicant, staff, consultants or partners have any pending or recent (within the past five years) litigation, sanctions and/or administrative complaints against them?
9. Has the applicant filed for bankruptcy within the past five (5) years?
10. Did the organization attend a CLT information session hosted by Housing?

Section 3 – CLT Geography
Key Needs in Setting Up a CLT

- Operating capital
- Affordable land
- Upfront investment (poss. large for a new organization)
- Community education and marketing to overcome possible resistance to homeownership model that does not include ownership
- Mortgage lenders ready to work with CLTs
Guadalupe Neighborhood Development Corporation

• **First Texas CLT**: 2011
• **Location**: Guadalupe and Central East Neighborhoods, Austin
• **CLT Model**: CLT is a program of GNDC
• **Types of Homes**: Single family homes currently; duplexes, ADUs
Steps

CHOOSE ORGANIZATIONAL STRUCTURE

RESEARCH PROGRAM ELEMENTS
Steering Committee Tasks

Areas for Research
- Local laws/rules
- Affordable land
- Marketing needs
- Potential mortgage financing
- Staffing needs
- Legal assistance

Organizational Structure Decisions
- Neighborhood, Regional, Citywide
- Homeowner membership majority or Typical CDC structure
- New CLT organization or new program of existing cdc
Questions?
Tax Exemptions and Heir Property

- Heir Property Overview
- Tax Treatment
- Community Strategy Example
Homestead Exemption Benefits

**General homestead exemption**
- Reductions off the taxable value
- 10% annual cap on increases in the assessed value
- Installment payment agreements for late taxes w/o penalties

**Senior and disability exemption**
- Additional reductions off the taxable value
- Cap on school taxes (+many cities and counties have a cap)
- Four installments w/o penalties or interest
- Tax deferral
How Heir Property Is Created

A homeowner dies without a will or transfer on death deed.

Legal title to the home passes automatically to the homeowner’s children or other relatives under the laws of “intestate succession.”

No legal paper trail.
Dallas County: Heir Property Homes, 2019

Population by Race/Ethnicity
1 dot = 25 persons

- White
- Black
- Hispanic/Latino
- Asian/Pacific Islander

- “Estate Of” with no Homestead Exemption*
- “Estate Of” with partial or full Homestead Exemption*

*Multiple co-owners listed on tax rolls; tax bill sent to the homestead
A Dallas Heir Property Home

Heir property home in Cedar Crest Area, Dallas
2020 Appraised Value: $114,660
15% Co-Ownership Interest

2020 Taxes with partial (15%) senior homestead exemption: $2,117
2020 Taxes with full senior homestead exemption: $11

Four years back taxes owed: $7,882
Risks of Heir Property

Limited access to the homestead tax exemption

- Difficult or impossible to sell a home
- Disqualification from home repair and disaster recovery programs

Risk of a partition action
100% Homestead Tax Exemption for Heir Property Owners

residence homestead = primary residence and acquired by will, transfer on death deed, or intestacy, regardless of whether their ownership interest is recorded in the county’s real property records.
Homestead Exemption Application Requirements for Heir Property Owners

- Heir property designation on application
- Affidavit (simplified) establishing the applicant’s ownership of interest in the property
  - included in Comptroller Form 50-114-A
  - Appraisal district cannot require copy of a recorded affidavit of heirship or deed
- Extra affidavit if more than one heir occupies the property as their primary residence
  - included in Comptroller Form 50-114-A
- Additional documents:
  - prior property owner's death certificate;
  - property's most recent utility bill;
  - citation of any court record relating to the applicant’s ownership of the property (such as a probated will), but only if available.
- Documentation required for all applications (e.g., driver’s license or state-issued i.d. with matching property address)
On-Going Barriers

- Lack of awareness about need to file an updated exemption application to qualify for 100% exemption.
- Application process can be daunting.
- Appraisal districts giving our incorrect information or requiring recorded title.
Community Strategies:

• Targeted community outreach
• Pro bono legal clinics
• Engage with local appraisal district
Targeted Community Outreach
ex) HECHO: San Antonio

• Map out all homeowners without a homestead exemption or w/a partial exemption

• Train community members

• Each doorknocker speaks to residents and provides exemption paperwork, resources, and basic assistance.

• Link residents to other types of assistance (ex. title issues, tax protest, etc.)
Lessons Learned from HECHO:

• MANY homeowners are not aware of or misunderstand the homestead exemption

• Importance of reaching out through existing networks (e.g., churches, neighborhood associations, community groups)

• Connecting to organizations that can help with clouded title, estate planning, etc.

• Other homeowner education and resources are often necessary

• Need to follow up with homeowners
Materials in the presentation drew on our **Community Land Trust Toolkit** and on the webinar *Black and Latino Heirs’ Property and Access to Property Tax Relief in Texas*, both available in full at our website below.

- Website: [https://law.utexas.edu/clinics/ecdc/publications](https://law.utexas.edu/clinics/ecdc/publications)
- Email: ecdc@law.utexas.edu
CLT and Heir Property Resource Links

**Community Land Trusts**
- UT School of Law Entrepreneurship and Community Development Clinic CLT Toolkit

- Grounded Solutions: National CLT Network
  [https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts](https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts)

- Dallas CLT Program
  [https://dallascityhall.com/departments/housing-neighborhood-revitalization/Pages/Community-Land-Trust.aspx](https://dallascityhall.com/departments/housing-neighborhood-revitalization/Pages/Community-Land-Trust.aspx)

- GNDC
  [https://www.guadalupendc.org/](https://www.guadalupendc.org/)

- City of Houston CLT
  [https://www.houstonclt.org/](https://www.houstonclt.org/)

**Heir Property**
- UT School of Law Entrepreneurship and Community Development Clinic Heir Property Resources

- Dallas Appraisal District Heir Property Information
  [https://www.dallascad.org/Exemptions.aspx](https://www.dallascad.org/Exemptions.aspx)

- Dallas Heir Property Study
  [https://static1.squarespace.com/static/5248ebd5e4b0240948a6ceff/t/5eff5de28603197f2e9454fc/1593794047591/191127_Heirs_SoDH.pdf](https://static1.squarespace.com/static/5248ebd5e4b0240948a6ceff/t/5eff5de28603197f2e9454fc/1593794047591/191127_Heirs_SoDH.pdf)