

ON COMMON GROUND

INTERNATIONAL PERSPECTIVES ON
THE COMMUNITY LAND TRUST



John Emmeus Davis, Line Algoed,
María E. Hernández-Torrales

EDITORS

ON COMMON GROUND

International Perspectives on
the Community Land Trust



John Emmeus Davis
Line Algoed
María E. Hernández-Torrales
EDITORS

TERRA NOSTRA PRESS
Madison, Wisconsin, USA



TERRA NOSTRA PRESS

Center for Community Land Trust Innovation
3146 Buena Vista Street
Madison, Wisconsin, USA 53704

Copyright © 2020 Center for CLT Innovation.

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means or stored in a database or retrieval system without the prior written permission of the Center for Community Land Trust Innovation, except in the case of brief quotations embedded in critical articles and reviews. For requests for permission to reprint portions of this book, please contact info@TerraNostraPress.org

Publisher's Cataloging-in-Publication Data

Names: Davis, John Emmeus, editor. | Algoed, Line, editor. | Hernández-Torrales, María E., editor.

Title: On common ground : international perspectives on the community land trust /
John Emmeus Davis ; Line Algoed ; María E. Hernández-Torrales, editors.

Description: Includes bibliographical references and index. | Madison, WI: Terra Nostra Press, 2020.

Identifiers: Library of Congress Control Number: 2020902607 | ISBN 978-1-7344030-0-8 (hardcover) |
ISBN 978-1-7344030-2-2 (paperback) | ISBN 978-1-7344030-1-5 (ebook)

Subjects: LCSH Land trusts. | Land tenure. | Land use. | Land use, Urban. | Nature conservation. |
Landscape protection. | Sustainable development. | Sustainable development—Developing countries. |
Economic development—Environmental aspects. | City planning—Environmental aspects. |
Community development. | Urban ecology (Sociology) | BISAC POLITICAL SCIENCE /
Public Policy / City Planning & Urban Development | LAW / Housing & Urban Development |
BUSINESS & ECONOMICS / Development / Sustainable Development |

SOCIAL SCIENCE / Sociology / Urban

Classification: LCC KF736.L3 O6 2020 | DDC 333.2—dc23

CONTENTS

Figures	xi
Foreword	xvii
<i>Jerry Maldonado</i> , Ford Foundation	xvii
<i>David Ireland</i> , World Habitat	xix
Introduction: On Common Ground	xxii
<i>John Emmeus Davis</i> , <i>Line Algoed</i> , and <i>María E. Hernández-Torrales</i>	
 PART ONE. BRIGHT IDEAS	
Surveying the Diverse Landscape of Common Ground: Structures, Strategies, and Justifications	1
1. In Land We Trust: Key Features and Common Variations of Community Land Trusts in the USA	3
<i>John Emmeus Davis</i>	
2. The Once and Future Garden City	13
<i>Yves Cabannes and Philip Ross</i>	
3. Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development	23
<i>John Emmeus Davis</i>	
4. Making a Case for CLTs in All Markets, Even Cold Ones	45
<i>Steve King</i>	
5. Challenges for the New Kid on the Block—Collective Property	63
<i>Liz Alden Wily</i>	

PART TWO. NATIONAL NETWORKS

Examining the Proliferation and Cross-Pollination of CLTs in the Global North 73

6. From Model to Movement: The Growth of Community Land Trusts in the United States 75
John Emmeus Davis
7. Origins and Evolution of Urban Community Land Trusts in Canada 93
Susannah Bunce and Joshua Barndt
8. Messy Is Good! Origins and Evolution of the CLT Movement in England 115
Stephen Hill, Catherine Harrington, and Tom Archer
9. Beyond England: Origins and Evolution of the Community Land Trust Movement in Europe 143
Geert De Pauw and Joaquin de Santos

PART THREE. REGIONAL SEEDBEDS

Exploring the Potential for CLT Growth in the Global South 165

10. Collective Land Tenure in Latin America and the Caribbean, Past and Present 167
Pierre Arnold, Jerónimo Díaz, and Line Algoed
11. Seeding the CLT in Latin America and the Caribbean: Origins, Achievements, and the Proof-of-Concept Example of the Caño Martín Peña Community Land Trust 189
María E. Hernández-Torrales, Lyvia Rodríguez Del Valle, Line Algoed, and Karla Torres Sueiro
12. Community Land Trusts in Informal Settlements: Adapting Features of Puerto Rico's Caño Martín Peña CLT to Address Land Insecurity in the Favelas of Rio de Janeiro, Brazil 211
Tarcyia Fidalgo Ribeiro, Line Algoed, María E. Hernández-Torrales, Lyvia Rodríguez Del Valle, Alejandro Cotté Morales, and Theresa Williamson

13. A Watershed Land Trust in Honduras: Profile of Foundation Eco Verde Sostenible <i>Kirby White and Nola White</i>	237
14. Seeding the CLT in Africa: Lessons from the Early Efforts to Establish Community Land Trusts in Kenya <i>Claire Simonneau and Ellen Bassett, with Emmanuel Midheme</i>	245
15. The Origins and Evolution of the CLT Model in South Asia <i>Hannah Sholder and Arif Hasan</i>	263
PART FOUR. URBAN APPLICATIONS	
Measuring the Progress of High-Performing CLTs in Selected Cities	281
16. Take a Stand, Own the Land: Dudley Neighbors Inc., a Community Land Trust in Boston, Massachusetts <i>Harry Smith and Tony Hernandez</i>	283
17. Lands in Trust for Urban Farming: Toward a Scalable Model <i>Nate Ela and Greg Rosenberg</i>	295
18. The Best Things in Life Are Perpetually Affordable: Profile of the Champlain Housing Trust, Burlington, Vermont <i>Brenda M. Torpy</i>	315
19. Stewardship of Urban Real Estate for Long-Term Community Benefit: Profile of the Urban Land Conservancy in Denver, Colorado <i>Alan Gottlieb and Aaron Miripol</i>	329
20. London Community Land Trust: A Story of People, Power, and Perseverance <i>Dave Smith</i>	343
21. From Pressure Group to Government Partner: The Story of the Brussels Community Land Trust <i>Geert De Pauw and Nele Aernouts</i>	359

PART FIVE. CRITICAL PERSPECTIVES

Meeting the Challenges of a Changing Environment 379

22. The Burden of Patience in a Long March Toward Racial Justice 381
Tony Pickett

23. A Reflection on the Bioethics of Community Land Trusts 393
María E. Hernández-Torrales

24. Community Control of Land: Thinking Beyond the Generic
Community Land Trust 407
Olivia R. Williams

25. Preserving Urban Generativity: The Role of Porous Spaces
in CLT Projects 419
Verena Lenna

26. Better Together: The Challenging, Transformative Complexity
of Community, Land, and Trust 431
John Emmeus Davis

About the Contributors 439

Index 449

1.

In Land We Trust

Key Features and Common Variations of Community Land Trusts in the USA



John Emmeus Davis

The Community Land Trust: A Guide to a New Model for Land Tenure in America was published in 1972. It was written by Robert Swann, Shimon Gottschalk, Erick Hansch, and Edward Webster of the International Independence Institute, a nonprofit organization founded five years earlier by Ralph Borsodi. The successor to that organization, the Institute for Community Economics, published *The Community Land Trust Handbook* in 1982, adding organizational and operational refinements to the model that Swann and his colleagues had introduced a decade before.

These two books provided the conceptual framework for what eventually became known in the United States as the “classic” CLT. Years later, this framework was given solidity and durability when a federal definition of the community land trust was inserted into the Housing and Community Development Act of 1992 by then-Congressman Bernie Sanders.

By the start of the New Millennium, therefore, a standard definition of the CLT had gained wide currency among community activists and public officials. There could be found in most community land trusts in the United States the same features of organization, ownership, and operation that characterized the “classic” CLT. But that was not true in every case. As practitioners adapted the model to fit the preferences, politics, and needs of their own communities, they modified some features of the classic CLT, while retaining others. This has created a CLT landscape of enormous diversity.¹

I. ORGANIZATION: HOW IS A CLT STRUCTURED?

Nonprofit, Charitable Corporation

CLT classic: Organizationally, a community land trust is a private, not-for-profit corporation that is chartered under the laws of the state in which it is located. (Legally, a CLT is

not a “trust,” but an entity that is called in many other countries an NGO: a “nongovernmental organization.”) Most CLTs in the United States target their activities and resources toward charitable activities like providing housing for low-income people, combating neighborhood deterioration, or what federal law describes as “lessening the burdens of government.” Most CLTs qualify, accordingly, for a charitable designation from the U.S. government that exempts them from paying federal income taxes and that gives private citizens a tax deduction when donating money or property to a CLT.²

CLT variations: Although most CLTs are autonomous organizations created “from scratch,” some have been established as a corporate subsidiary or internal program of an older nonprofit organization. In a few cases, a local government or a municipal corporation like a redevelopment authority or a public housing authority has developed resale-restricted, owner-occupied housing on leased land, administering a program that resembles a CLT.

When a new CLT is established within the corporate shell of a pre-existing organization, the CLT usually becomes a permanent part of that organization’s on-going operations. This arrangement can be temporary, however, with the CLT eventually spun off as a separate entity when it has the capacity, constituency, and funding to thrive by itself. Another variation has occurred among a handful of CLTs that have chosen not to seek a tax exemption from the federal government in order to serve households earning more than the median or to pursue other activities that do not qualify as “charitable.”

Place-Based Membership

CLT classic: The CLT operates within the physical, geographic boundaries of a targeted locale. It is guided by — and accountable to — the people who call that locality their home. Any adult who resides on the CLT’s land and any adult who resides within its geographically defined “community” is eligible to become a voting member of the CLT. The duties and powers granted to this corporate membership are spelled out in the organization’s bylaws. Members typically nominate and elect a majority of the governing board. Members also approve proposed amendments to the bylaws, including any changes to the resale formula setting the future price of CLT homes.

CLT variations: Most CLTs are membership organizations, drawing their members from a community that is geographically defined. Within the diverse world of CLTs, however, there is considerable variation in the size of that “community.” Two decades ago, the area served by most CLTs was a single inner-city neighborhood or a small rural town. That has changed. Many CLTs formed in more recent years have staked out a wider service area, encompassing multiple neighborhoods, an entire city, an entire county, or, in a few cases, a multi-county region.

There are also many variations in the composition of a CLT's membership. Some CLT's have opened their membership to individuals who reside *outside* of the CLT's target area. Other CLT's have expanded their membership beyond individuals to allow non-profit corporations, local governments, or private institutions like hospitals, churches, or businesses to become voting members of the CLT. There are also some CLTs without a membership and a few where the entire board is appointed by a municipal government, by a community foundation, or by some other corporate sponsor.

Tripartite Governance

CLT classic: The board of directors of the "classic" CLT is composed of three parts, each containing an equal number of seats. One third of the board represents the interests of people who lease land from the CLT ("leaseholder representatives"). One third of the board represents the interests of residents from the surrounding "community" who neither lease land from the CLT nor live in CLT housing ("general representatives"). One third is made up of public officials, local funders, nonprofit providers of housing or social services, and other individuals who are deemed to speak for the public interest ("public representatives"). Control of the CLT's board is diffused and balanced to ensure that all interests are heard but that no interest is predominant.

CLT variations: Although the governing board of nearly every CLT is distinguished by a diversity of interests and by a balance of interests, the exact make-up of this board can vary greatly from one CLT to another. Many start-up CLTs, moreover, have interim boards that are quite different in their composition from the broadly representative, member-elected, tripartite board that will ultimately govern the CLT.

Every CLT has a board or advisory committee with leaseholder representatives, but some CLTs subdivide this leaseholder category among directors who represent the interests of leaseholders occupying single-family homes and those occupying co-op units or commercial buildings. CLTs that are managing rental housing may reserve leaseholder seats for tenants. All CLTs have "public representatives," but some CLTs fill these seats exclusively with representatives from local or state government, while others include within this "public" category representatives of local churches, foundations, banks, social service agencies, tenant rights organizations, or community development corporations.

II. OWNERSHIP: WHO HOLDS THE REAL ESTATE?

Dual Ownership

CLT classic: A nonprofit corporation (the CLT) acquires multiple parcels of land throughout its targeted geographic area with the intention of retaining ownership of these parcels forever. Any buildings already located on these lands or later constructed on these lands

are eventually sold off to other parties. A building's owner may be an individual family, a limited equity housing cooperative, a limited liability company, a cohousing community, a small business, or any other entity or combination of entities.

CLT variations: Although dual ownership is a characteristic of nearly every organization that calls itself a community land trust, buildings that are renter-occupied are sometimes treated differently than buildings that are owner-occupied. Some CLTs, when dealing with multi-unit rentals, for example, whether residential or commercial, retain ownership of the buildings as well as the land. The reverse sometimes happens in the case of multi-unit condominiums when a CLT does not own the underlying land. The CLT possesses, instead, a covenant attached to individual condominiums, granting the CLT a durable right to repurchase these condominiums for an affordable, formula-determined price when an owner later decides to sell. This has occurred most frequently in cities where a CLT has been assigned responsibility for monitoring and enforcing affordability controls over inclusionary housing units extracted from for-profit developers by a municipality.

Leased Land

CLT classic: Although CLTs plan never to resell their land, they provide for the exclusive occupancy and use of land by the owners of any buildings located thereon. Parcels of land are conveyed to homeowners (or to the owners of other types of residential or commercial structures) through ground leases that typically run for 99 years. This two-party contract gives the lessee an exclusive right to occupy the CLT's land, while giving the lessor (i.e., the CLT) a durable right to control how the land is used and how any buildings on its land are priced, financed, repaired, and resold.

CLT variations: The ground lease employed by most CLTs in the United States for the conveyance of land is based on a "model CLT ground lease" that has been refined by CLT practitioners over the past 50 years. The exact terms and conditions in this two-party contract can vary greatly from one CLT to another, however, especially with regard to restrictions on subletting, improving, and reselling the buildings. Another variation has been pioneered in Puerto Rico, where the Caño Martín Peña CLT uses a surface rights deed, rather than a ground lease, to give homeowners security of tenure on land that continues to be owned by the CLT.

Diverse Development

CLT classic: The CLT is a tool of enormous flexibility, accommodating a variety of land uses, property tenures, and building types. CLTs across the United States have made land available for the construction — or for the acquisition, rehabilitation, and resale — of housing of many kinds, including single-family homes, duplexes, condominiums, cooperatives, multi-unit rental housing, homeless shelters, and mobile home parks. CLTs have helped to create nonresidential facilities for neighborhood businesses, recreation,

education, job training, and the arts. CLTs have also made their lands available for uses where there are few (if any) buildings, providing sites for community gardens, urban farms, and neighborhood parks or, in more rural areas, providing extensive acreage for farming, forestry, and conservation. Community-owned land is the common ingredient, underlying all of these buildings and uses.

CLT variations: Some CLTs focus on a single type and tenure of housing, like detached, owner-occupied houses. Some focus on a single use of their land, like urban agriculture or rural farming. Other CLTs assemble a diverse portfolio of lands and buildings, taking full advantage of the model's flexibility. The same CLT, therefore, may be the landholder and long-term steward for a mix of owner-occupied housing and renter-occupied housing or for a wide range of residential and commercial buildings.

III. OPERATION: WHAT DOES A CLT DO?

Mission-Driven Growth

CLT classic: By virtue of their charitable status and social mission, CLTs dedicate most of their resources to serving people who are economically precarious — an operational priority that is sometimes characterized as a “preferential option for the poor.” Spurred by the needs of people and places they serve, CLTs pursue a strategy of active acquisition, aimed at steadily expanding the number of acres, homes, and buildings brought into the CLT's protected domain of non-market ownership and permanent affordability.

CLT variations: The scale and pace of acquisition can vary widely from one CLT to another; so can the households a CLT will serve and the roles it will play in expanding its portfolio. Some CLTs grow slowly, each year purchasing only a few parcels of land on which are constructed (or rehabilitated) a handful of single-family houses. Other CLTs grow rapidly, benefiting from private donations or public largess that allow them to acquire larger parcels of land and to develop many units of housing. Some CLTs target their activities to the very poor, while others serve households above median income.

Finally, some CLTs do development that is initiated and supervised by their own staff; others leave development to nonprofit, for-profit, or governmental partners, confining their efforts to assembling land, leasing land, and preserving the affordability of any housing entrusted to the CLT's stewardship. Between these two extremes of the CLT-as-developer and the CLT-as-steward, there are various roles that different CLTs have embraced in expanding their holdings.

Perpetual Affordability

CLT classic: The CLT retains a preemptive option to repurchase any residential (or commercial) structures located upon its land, whenever the owners of these buildings decide to sell. The resale price is determined by a formula contained in the ground lease.

This limited-equity formula is designed to give present homeowners a fair return on their investment, while giving future homebuyers fair access to housing at an affordable price. By design and by intent, the CLT is committed to preserving the affordability of housing (and other structures) forever — one owner after another, one generation after another.

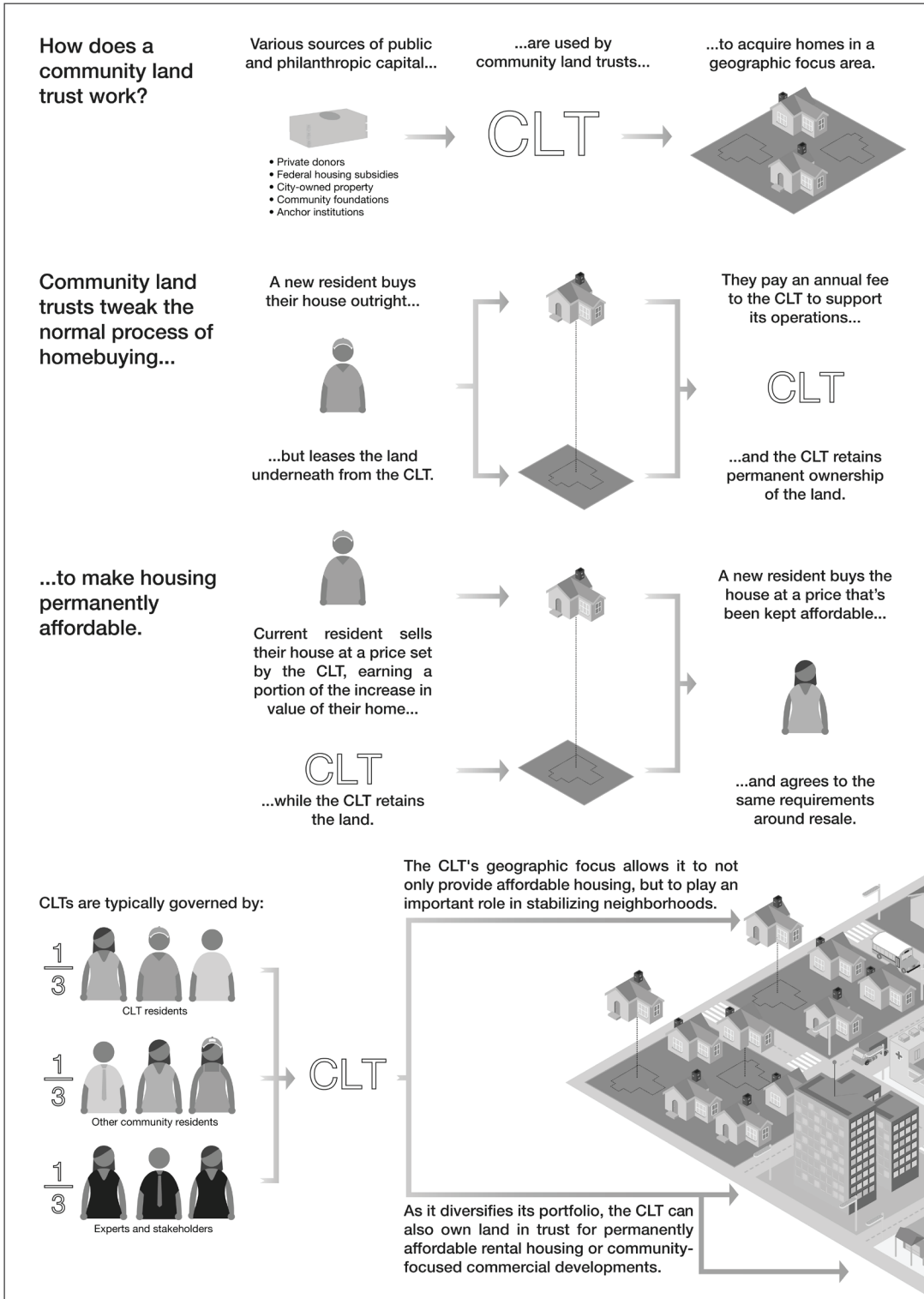
CLT variations: While permanent affordability is a commitment of every CLT, the formula that defines and enforces affordability can vary greatly from one CLT to another. That is due, in part, to the different methods that CLTs adopt in calculating the resale price for any housing located upon their land. Different formulas may also result from different goals that particular CLTs are trying to achieve or from different populations they are trying to serve. Furthermore, while the vast majority of CLTs adopt a *single* resale formula, covering all types and tenures of housing within their portfolio — and covering every neighborhood in which they work — a few CLTs have fine-tuned their resale formulas to allow some variation among different components of their housing stock (distinguishing, for example, among detached, single-family houses, condominiums, and cooperatives). A few other CLTs have tailored their resale formula to account for varying conditions between hot and cold sub-markets within their service area.

Perpetual Responsibility

CLT classic: The CLT does not disappear once a building is sold to a homeowner, a cooperative, or some other entity. As the owner of lands beneath any number of buildings and as the owner of an option to re-purchase these buildings for a formula-determined price, the CLT has a continuing interest in what happens to the structures — and to the people who occupy them. The ground lease requires responsible use of the premises. Should a building become a hazard, the ground lease gives the CLT the right to step in and to force repairs. Similarly, should a homeowner get behind in making mortgage payments, the ground lease gives the CLT the right to step in and to cure the default, forestalling foreclosure. The CLT remains a party to the deal, safeguarding the structural integrity of buildings and the residential security of the people who occupy them.

CLT variations: Some CLTs provide a full menu of pre-purchase and post-purchase services. They go to great lengths to prepare people for the responsibilities of homeownership and to support their homeowners, in good times and bad. Other CLTs do little more than monitor and enforce the occupancy, eligibility, and affordability controls embedded in the ground lease, intervening only to prevent the loss of a building faced with foreclosure. The intensity of a CLT's post-purchase involvement in the lives of its leaseholders depends mostly on a CLT's capacity. It is also affected, however, by the CLT's own preferences, as each CLT tries to find an acceptable, sustainable balance between supporting the success of newly minted homeowners, while leaving them alone to enjoy the privacy and independence that homeownership is supposed to provide.

Fig. 1.1
The “Classic” Community Land Trust (USA)



IV. CAUSES OF CONTINUING VARIATION

A standard definition of the “classic” community land trust was crafted during a formative, twenty-year period between 1972 and 1992. This conception of what it meant to be a CLT and to behave like one became the foundation on which early CLT practitioners in the United States built their organizations, projects, messaging, and “brand.”

The CLT did not stand still, however. Practitioners were soon hard at work tailoring the model’s features to meet local circumstances. Some of these variations occurred within the framework of the model’s basic structure and did little to alter the “classic” CLT. Others went much further, changing the CLT’s “classic” structure into something quite different. Even when that occurred, however, most organizations calling themselves a CLT retained the model’s core commitments to land stewardship, perpetual affordability, perpetual responsibility, and organizational accountability to residents of the places they serve.

There have been many causes behind the continuing process of experimentation and variation among CLTs in the United States. The most influential of these factors, causing the most significant modifications in standard features of the “classic” model, have been the following:

- ***Density of the organizational landscape.*** In localities where a number of nonprofit housing development organizations already exist, it has occasionally been prudent and practical to establish a CLT under the sponsorship — or inside the corporate shell — of another nonprofit, instead of starting a new corporation from scratch. At other times, in other places, independently incorporated CLTs have sought a special niche within a densely populated organizational landscape by focusing on functions or roles that are not only different than those of existing nonprofits but also different than those which a “classic” CLT has traditionally embraced.
- ***Density of residential development.*** In communities where buildable land is expensive, the development of new housing is more economical when it takes the form of multi-unit condominiums, cooperatives, rentals, or manufactured housing. Multi-unit housing works well with a CLT, but often requires modifications in the CLT’s ground lease. It may also engender modifications in the structure of a CLT’s membership and governing board. That is not to suggest that the “classic” CLT is to be found only in communities where detached, single-family houses on separate parcels of land are the primary form of housing production. It is to say that the experience of developing multi-unit housing has often been a spur to innovation, causing several variations in the “classic” model.

- **Requirements of funders.** Changes in the model are sometimes provoked by the demands of public agencies and private lenders on which a CLT must depend for the funding and financing that make its projects possible. Innovation may also occur when a municipality looks to a CLT to serve as the long-term steward for affordability controls mandated by the municipality — either for publicly-subsidized housing on a CLT’s land or for inclusionary housing units that are scattered throughout a larger residential project.
- **Marketing an unfamiliar model.** The CLT is sometimes modified to make an unfamiliar model of homeownership look and feel more like the “deal” that is typically offered to more affluent households when buying a home on the open market. By tinkering with the bundle of rights and responsibilities that are provided to a CLT leaseholder/homeowner, especially those affecting the use, improvement, and resale of a CLT home, practitioners attempt to develop and to market a form of housing that is different enough from traditional homeownership to protect the long-term interests of the community, but close enough to traditional homeownership to attract investment and support from prospective homebuyers.
- **Development versus organizing.** It is difficult for any community-based housing organization to wear two hats. As a *developer*, a CLT is accountable to a constellation of funders, contractors, deadlines, and demands that drive the business of getting affordable housing constructed and occupied. As an *organizer*, the CLT is accountable to a constellation of interested parties who lease its land, reside within its community, make up its membership, and serve on its board. While the “classic” CLT strives to serve both sets of interests, this balancing act is not to the liking of everyone. For CLTs that favor development over organizing, especially where a CLT program has been grafted onto the structures and programs of an existing community development corporation or where a CLT has been initiated by a municipal government, there has sometimes been a tendency to modify, dilute, or even abandon membership features or board features that make a CLT directly accountable to a local constituency of lower-income residents. Conversely, for CLTs that favor organizing over development, there has sometimes been a tendency to spend more time on building and sustaining the organization than on building and managing an expanding stock of affordable housing. The most successful CLTs have found a sustainable balance between these extremes of the CLT-as-developer and the CLT-as-organizer.



Because of factors such as these, the CLT landscape in the United States has become increasingly diverse over the years. The model has continued to evolve. These variations have helped the model to spread into new areas and to be applied in new ways. Much of the growth in the CLT movement can, in fact, be attributed to the model's adaptability and plasticity.

Something is lost whenever fundamental features of the "classic" CLT are altered, however, since there are sound philosophical and practical reasons for every one of them. On the other hand, something of value is sometimes gained. Over time, some of these variations will be discarded, while others will prove so beneficial and so effective that they eventually become a permanent part of what the "classic" CLT is thought to be.

Notes

1. Adapted from "The Diverse World of Community Land Trusts," Chapter One of a manual authored by John Emmeus Davis in 2001 and revised in 2006. The full manual, entitled *Development without Displacement: Organizational and Operational Choices in Starting a Community Land Trust*, is available on-line at: burlingtonassociates.com
2. This tax exemption is granted to nonprofit organizations that are organized and operated to serve "charitable purposes," as defined under Section 501(c)(3) of the Internal Revenue Code.