



# Guide to Multifamily Housing on Community Land Trust Property in California

## — Introduction

This guide was written for community land trusts (CLTs) to provide an overview of ownership and management structures for multi-unit properties on CLT land given that choices and practices vary widely. We hope to help CLTs navigate their options and understand the varying legal considerations, and organizational implications associated with each ownership structure. This memo summarizes five different structures and some key considerations for each. There are additional possibilities beyond those summarized here but the five structures presented in this memo are most commonly implemented by CLTs.

The following questions could help guide a discussion on which option may be best for a particular property:

- (a) Are residents interested in participating in governing the property? And if yes, what types of decisions are most important for the residents to participate in?
- (b) How important is ownership and equity building to the residents of a building?
- (c) Is it possible to obtain the financing necessary for the residents to own the building in the form of a limited-equity housing cooperative (Option 4)? Is it possible for some or all residents to obtain their own mortgage to finance purchase of their unit in a condominium (Option 5)?
- (d) What is the capacity of the CLT to provide hands-on support for a resident association or a cooperative board?
- (e) What are the potential upsides and downsides of each model – to both the CLT and to the residents?

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## — Acknowledgments

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## 1. Rental Housing on CLT Land

### How It Works with a CLT

Residents are tenants like in normal landlord-tenant relationships. In this model the landlord would usually be the CLT, however, some CLTs with rental housing enter into a ground lease with a property management company which owns and manages the improvements (i.e. the building(s)) so the property manager partially holds the position of landlord. In either case, as a landlord the CLT helps ensure the property is maintained as affordable housing. Depending on funding associated with the property, there may be a recorded deed restriction that facilitates a funder (e.g. a government housing agency) enforcing the affordable housing requirements. Additionally, depending on the governance structure of the CLT, the residents may be eligible to become voting members in the CLT who elect one or more representatives to the board of the CLT, unlike in a regular landlord-tenant relationship. Otherwise rental housing on CLT land can be much like a straightforward landlord-tenant relationship. The next option below (Option 2) discusses a resident council or similar body elected by residents such that the residents have more formal rights and responsibilities to manage the property and even in a simpler rental model where the CLT or a professional third party company is the manager of the property, there can be some resident engagement in the property management, customized to meet the optimal level of resident participation. For example, the residents might meet periodically with the property manager and/or CLT as a forum for discussing any grievances or organizing activities for residents. This may be a way of managing the property indefinitely or this may be a practical interim arrangement while the CLT and residents work towards one of the other options described in this memo.

*This model is simplest and likely easiest for tenants to understand.*

### Legal Documents Needed

A standard residential rental lease agreement with each resident household can be used with perhaps a few extra clauses that address resident income qualifications and the need to participate in annual income certification in accordance with CLT's policies, property tax exemption, and funder requirements, as applicable. In the case that a third-party owns the building and leases the land from the CLT, a ground lease between the CLT and the third party will be required in addition to the individual leases between the tenants and the third party.

### Things to Discuss with a Lawyer

You should seek legal advice regarding what state and local tenants' rights laws apply, including rent control and just cause eviction protections, as sometimes affordability-restricted properties are exempt from some of these laws so as to give nonprofit affordable housing providers greater control over ensuring their subsidized housing units are being utilized by lower income households. It may also be advisable, if applicable, to include language in the lease agreement about applicable exemptions from rent control and just cause eviction laws to fulfill requirements of those exemptions and to avoid unpleasant surprises. Additionally, your sources of funding may impose other requirements with regards to raising of rents, etc. which should be addressed in lease agreements. Finally, this model is likely eligible for property tax exemption so there are numerous forms the CLT should file to apply for and maintain property tax exemption.<sup>1</sup>

### **When this might be a good model for your property**

This model has the lowest level of tenant engagement in decision-making so it is great for tenants who are not interested in putting time and energy into their property, or for a property recently acquired by a CLT that is still building capacity to share property management responsibilities with the tenants. This model is simplest and likely easiest for tenants to understand. Additionally, rental housing (unlike resident ownership housing) is likely eligible for property tax exemption so for projects on tight budgets sometimes the ability to obtain property tax exemption is a heavy factor weighing in support of rental housing.

## **2. Rental Housing on CLT land with a Resident Council**

### **How It Works with a CLT**

This model is largely similar to Option 1 above. The ownership structure is the same. The main difference is that residents participate in self-governance and property management decisions, as described in an agreement between the residents and the CLT. In this model, there is a resident council (or steering committee or board or whatever term is preferred) chosen by the residents. The exact roles and responsibilities of the resident council can be customized to meet the needs of a specific property. Some examples of matters the resident council might have control over include approval of new residents, setting house rules (e.g. quiet hours, pet policies, etc.), and in setting the budget for the property. In this model there may or may not be a professional property manager to work with the resident

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<sup>1</sup> For details on how to apply for property tax exemption in California, see the Board of Equalization's Publication 149: Property Tax Welfare Exemption (December 2018) at <https://www.boe.ca.gov/proptaxes/pdf/pub149.pdf>. See also CACLTN's [Property Tax Law Guide for CLTs](#).

council on implementing the resident council's decisions. In a smaller property the members of the resident council might do the implementation, whereas in a larger property perhaps a paid manager would take instructions from the resident council.

Typically the resident council is an informal unincorporated association, however, it should still have its own governing documents which address topics like how many members serve on the Resident Council, how are members of the council elected, how are meetings called, how are proposals made and decided upon, etc. In this model, if residents hold any responsibility for collecting rents, typically the funds would be deposited into the CLT's bank account for the property.<sup>2</sup> Residents could decide to open their own group bank account for holding funds for smaller expenses that residents might agree to share, such as utility bills or expenses for organizing social events and the like, but typically rents would not be deposited here because the rental income belongs to the CLT.

*This may be a good baseline for how CLTs implement multifamily rental housing when the latter options are too onerous for the CLT and residents, but where residents are interested in being highly engaged in the management of the property.*

This model is akin to what some housing developers call "mutual housing." Some CLTs using this model refer to the building as a cooperative because of the democratic governance of the property by its residents. However, it should be noted that calling the property a cooperative may be confusing to some because typically in cooperatives members not only govern the enterprise democratically but they also may have certain economic rights, such as a right to a share of surplus revenue, etc.. In this model residents have no ownership stake in the property other than the rights afforded to them via a lease agreement for their unit. This may be a good baseline for how CLTs implement multifamily rental housing when the latter options are too onerous for the CLT and residents, but where residents are interested in being highly engaged in the management of the property.

### **Legal Documents Needed**

- 1) Similar to Option 1 (Rental Housing) above, a standard residential rental lease agreement can be used with perhaps just a few extra clauses that address resident

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<sup>2</sup> As in Option 1, a third party rental property owner may lease the land from the CLT and interact directly with the residents in the place of the CLT.

income qualifications and the need to participate in annual income certification in accordance with CLT's policies, property tax exemption, and funder requirements. The lease could note the right of residents to participate in elections for the Resident Council.

- 2) Agreement between the CLT and the residents together as a group regarding what decisions will be made by residents, such as selection of new residents to fill a vacancy, etc.. A standard property management agreement might be a good template for this arrangement but it will need some customization.
- 3) Governance document: the Resident Council should have a governance document (like bylaws in a corporation) explaining how it will make decisions. This document should describe things such as: will all residents be part of the Resident Council or will there be a group of residents elected to serve on the Council? If there is an elected group, how often will elections occur and how many members will there be? Will each individual resident have a vote or will each household/unit have one vote? Etc. Additionally, will there be any managerial or officer positions such as a president or chair of the council or perhaps a maintenance manager, among many other possibilities. This governing document could be similar to bylaws of a nonprofit membership corporation or it could be much shorter and simpler given that there are no stringent legal requirements for these matters so long as the council is not a corporation.

### **Things to Discuss with a Lawyer**

All of the items mentioned in Option 1 above should be discussed with an attorney for this structure as well. In addition, the level of resident participation and the details of the governing document for the Resident Council or other similar body of residents might merit some discussion with an attorney. Finally, a lawyer should advise on whether it makes sense for the residents to be organized as an unincorporated association and if so, whether to register the association with the state of California. For discussion on organizing residents as a nonprofit corporation, see options described below. Note that for smaller groups of residents and groups of residents with fewer managerial responsibilities, the unincorporated association model may be less administratively burdensome than a corporation. Some attorneys, CLT practitioners and CLT residents may prefer the corporation because it provides a liability shield to resident members against possible claims an injured resident may bring. However, some might determine that a nonprofit unincorporated association may be sufficient since the CLT as landlord would be the primary target for any property-related lawsuits for most matters. In any event, general liability insurance for the resident association is advisable for protecting the CLT

and residents alike from legal claims. Of course, the CLT (like in any model) should carry insurance as well.

### **When this might be a good model for your property**

This would be a good model for a smaller property where Options 3, 4, and 5 are unduly costly and burdensome but where residents want to be engaged in matters like selection of new residents, organizing programs and activities for residents of the property, renovations, etc. This model is also likely eligible for property tax exemption like Option 1.

## **3) Resident Operated Nonprofit (RON) Leasing Land and Building(s) from CLT**

### **How It Works with a CLT**

This model entails forming a new nonprofit corporation separate from the CLT. This nonprofit corporation leases the entire property from the CLT and creates individual rental leases between itself and each resident household occupying a room or unit. The separate corporation is controlled by residents and is sometimes referred to as a “resident operated nonprofit,” or the abbreviated “RON.” It is sometimes also called a “zero equity housing cooperative,” a “community equity housing cooperative,” a “nonprofit cooperative,” or just a “cooperative.”<sup>3</sup> There is no precise definition of this model in the law so it has developed several different common names and the exact legal structure can be customized. One key feature that makes this RON model different from limited-equity housing cooperatives (discussed in the next section) and other types of housing cooperatives is that in this model the residents are simply

*In situations where the residents are effective at governing together and managing their property but are not yet ready for the complexities of a LEHC, this would be an excellent alternative choice.*

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<sup>3</sup> Affordable housing cooperatives in California are typically organized as nonprofit corporations. Note, however, that California corporations law limits the use of the word “cooperative” in names of organization and business entities to only those that are organized under the Cooperative Corporations Law (Corporations Code Section 12200 *et seq.*) but with a few exceptions. One exception is for “any housing cooperative, the financing of which is insured, guaranteed, or provided, in whole or in part, by a public or statutorily chartered entity pursuant to a program created for housing cooperatives” (California Corporations Code Section [12311](#) (b)). Therefore, non-publicly funded RONs should not use the word “cooperative” in their name unless they form as Cooperative Corporations, which is different from forming as a nonprofit corporation. The author of this memo knows of no housing cooperatives in California on CLT land structured as Cooperative Corporations. The nonprofit corporation form (or LLC subsidiary of a nonprofit corporation) is much more conducive to obtaining the property tax welfare exemption, which is a significant tax benefit available to lower income rental housing. Therefore, the Cooperative Corporation structure would be inadvisable for lower income housing.



renters and they don't have a financial interest in the property aside from the fact that it provides housing at an affordable rent to them.

In this RON model there are two types of leases involved: the CLT has a primary lease (sometimes called a "master lease") with the RON for the entire property (land and improvements), and residents have individual lease agreements for their home or apartment unit with the RON. This way, compared to Option 2 (rental housing with resident council) discussed above, the residents have more direct rights and responsibilities for managing the property. Typically, however, the CLT would still exercise at least some oversight and control of the property by having clauses in the primary lease which give the CLT certain approval rights over things like admission of residents (perhaps just for lower income verification purposes or perhaps more generally), requirements regarding the budget of the RON, and/or likely the CLT would retain control over construction and repair work done on the property. The CLT-RON lease is customizable to afford the CLT more or less control over the property.

### **Legal Documents Needed**

- 1) Individual lease agreements between RON and resident households, which may be combined with a membership agreement
- 2) Membership Agreement for each resident household (if not integrated into lease)
- 3) Primary lease (what realtors and lawyers often refer to as a "master lease") between RON and CLT for the entire property
- 4) RON corporation Articles of Incorporation
- 5) RON corporation Bylaws
- 6) RON corporation may seek 501(c)(3) tax-exempt status with the IRS and tax-exemption from the California Franchise tax board which both require initial applications and ongoing filings.
- 7) RON corporation may also need to register and make regular filings with the California Attorney General's Registry of Charitable Trusts.

### **Things to Discuss with a Lawyer**

- 1) Like with Option 2 above, seek legal advice regarding general landlord-tenant law topics, adhering to funder requirements, and applying for property tax exemption.
- 2) Creation of the RON corporation requires numerous steps, best done with an attorney's advice.
- 3) Governing a corporation and maintaining it in good standing is subject to many legal requirements such as having a board of directors and officers who fulfill certain roles, filing tax papers annually, and numerous other requirements which



may not be familiar to residents, so it's best for residents to be advised by an attorney.

- 4) Tax-exempt status should be discussed with an attorney. RONs serving predominantly lower income households will likely pursue 501(c)(3) federal income tax exemption as this is optimal for pursuing government funding and for property tax exemption. However, there are other types of tax-exempt status that the RON may consider, especially if it is a mixed income property.

### **When might this be a good model for your property**

This model is well suited for a medium to large property, especially one where there's a strong sense of community among tenants and enough economy of scale to hire an on-site resident manager who can handle some bookkeeping and government filings, and work with a CPA and attorney as needed. In situations where the residents are effective at governing together and managing their property but are not yet ready for the complexities of a LEHC (Option 4 below), this would be an excellent alternative choice.

However, this model is somewhat complex compared to options 1 and 2 above, because this model requires the residents to be in charge of their own nonprofit corporation which requires ongoing paperwork and administrative requirements. For example, any corporation needs to have a board of directors that is subject to meeting notice requirements and record-keeping requirements. All corporations must do annual tax filings (even if a corporation is exempt from paying taxes, there are still filing requirements to maintain tax-exemption). Additionally, for the property to have a property tax welfare exemption, more paperwork will be required under this model compared to other rental housing models because the CLT and RON will each need to demonstrate their nonprofit status and charitable use of the property to the State Board of Equalization and the local county tax assessor's office. These administrative requirements are a struggle for smaller, all-volunteer groups of residents because, oftentimes, volunteers are not motivated to do tax exemption paperwork, etc. Although there are tax professionals who can be hired to do much of this paperwork, that incurs additional costs and residents will still need to work with an outside tax preparer to provide records and information.

## **4) Limited-Equity Housing Cooperative Owning Building(s) and Leasing Land from CLT**

### **How It Works with a CLT**

A limited-equity housing cooperative (LEHC) is a type of corporation that owns or leases property, where the residents own a share of that corporation (as opposed to residents

owning their individual dwelling unit like in a condominium). Typically when there is a LEHC on CLT land, the LEHC owns the improvements (i.e. the apartment building or town homes) and the CLT owns the land. The CLT leases the land to the LEHC through a 99-year renewable ground lease, which passes along many of the powers and responsibilities of property ownership to the LEHC. For example, the LEHC might be in charge of decisions like filling vacancies and setting house rules. The LEHC might choose to hire a property manager to do much of the day-to-day work or the LEHC residents may do this work. The LEHC is typically also responsible for most of the costs of maintaining the property, including property taxes, repairs, and insurance. However, much of these rights and responsibilities are customizable and the ground lease could afford the CLT more or less control.

The LEHC is typically structured as a nonprofit public benefit corporation, or perhaps a nonprofit mutual benefit corporation. Among LEHCs on CLT land, the nonprofit public benefit corporation is most prevalent.<sup>4</sup> Typically each resident household purchases a membership or share in the LEHC which gives them rights to occupy a unit and participate in governance of the cooperative, and the membership may also come with responsibilities to pay rent, dues, property tax bills, and/or other costs associated with maintaining the property. Similar to the RON model discussed previously, this model is intended to facilitate greater resident control over their property compared to simpler rental housing models. Different from the RON model, the LEHC model provides an opportunity for residents to be financially invested in the property through purchasing a membership or share in the LEHC corporation. To keep the property affordable for future residents, there are restrictions on the increase in value of membership shares in a LEHC per California Civil Code Section 817 (and see section on Resident Equity and Resale Formulas below for more detail).

*Once the residents are literally invested in their property and have assumed many rights and responsibilities associated with ownership, they are more likely to be proactive stewards of their property.*

### Legal Documents Needed

- 1) Individual lease agreements between LEHC and resident households, which may be combined with a membership agreement (often called a “proprietary lease” because the lease is between a co-owner of the cooperative and the cooperative).
- 2) Membership Agreement for each resident household (if not integrated into lease agreement)

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<sup>4</sup> The Cooperative Corporation Law discussed in the previous section allows a LEHC structured as a nonprofit corporation or something other than a Cooperative Corporation to use the word Cooperative in its name. See California Corporations Code Section [12311](#) (b).

- 3) Ground lease between LEHC and CLT for the land
- 4) LEHC corporation Articles of Incorporation
- 5) LEHC corporation Bylaws - because LEHCs are subject to the California Davis–Stirling Common Interest Development Act, LEHC bylaws must contain more detailed language about certain topics like board elections, board meetings, and governance compared to generic nonprofit membership corporations. Additionally, the LEHC's bylaws should address topics like membership share purchases, appreciation in value of shares, etc. so they will necessarily be more complex than typical nonprofit organization bylaws.
- 6) LEHC corporation may seek 501(c)(3) tax-exempt status with the IRS and tax-exemption from the California Franchise tax board which both require initial applications and ongoing filings. It might seek a different form of tax-exempt status but in most cases there will be some government filings related to tax-exemption.
- 7) LEHC corporation may also need to register and make regular filings with the California Attorney General's Registry of Charitable Trusts, if a charitable corporation.
- 8) The sale of memberships in the LEHC may constitute a subdivision and therefore need to apply for approval from the local government and/or California Department of Real Estate (DRE). However, there is an exemption from the subdivision application process with the DRE commonly utilized by LEHCs serving lower income households described in Business and Professions Code Section [11003.4](#) (b) which requires an opinion letter from an attorney, among numerous other things.

### **Things to Discuss with a Lawyer**

All of the topics to be discussed with a lawyer noted under other models should be discussed with a lawyer in the case of a LEHC on CLT land, plus all of the legal documents listed above should involve a lawyer. In particular, a lawyer should advise on how to be exempt from local and state subdivision laws or how to comply with such laws. This model is likely ineligible for California's property tax "welfare exemption" as of this writing, but may be eligible for some more modest property tax relief if certain conditions are met.<sup>5</sup>

### **When this might be a good model for your property**

This model provides the most power and the most responsibility to residents of all models described in this memo except for condominiums.

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<sup>5</sup> CACLTN's Property Tax Guide is available to CACLTN members online [here](#).

**LEHCs Compared to Rental Housing Models:** Compared to the rental housing models described in prior sections, the LEHC entails more legal and financial complexity so it likely will take longer to set up compared to rental options. It will also likely require more CLT staff time, attorneys' fees, and other costs to set up. However, the intention is that once the residents are literally invested in their property and have assumed many rights and responsibilities associated with ownership, they are more likely to be proactive stewards of their property compared to ordinary renters (or renters with some governance powers like in Options 2 and 3). Thus, when organized effectively, over time a LEHC might require less CLT staff time and attention to manage compared to a rental property. However, among other challenges, a common obstacle to developing LEHCs as lower income housing is lack of access to funding that will accommodate this model. Low-income housing tax credits (LIHTC) and other prevalent forms of funding for affordable housing are designed for affordable rental housing, not resident ownership. Additionally, many conventional mortgage lenders do not lend to housing cooperatives nor to individuals or families seeking to purchase a membership share in a cooperative.

The LEHC model might be a good opportunity for a multi-unit property where residents are very engaged and interested in a homeownership opportunity but where the condominium process (discussed in the next section) is too cost prohibitive, or where many residents would likely not be able to obtain a condominium mortgage to purchase their own unit.

**LEHCs Compared to Condominiums:** For CLTs choosing between LEHCs and condominiums, a few key considerations revolve around financing and subdivision laws.

- **Financing:** Regarding financing, typically a housing cooperative has a “blanket mortgage”— one large loan against the entire property. The blanket mortgage gets paid off over time by the LEHC by way of the members making monthly “maintenance” payments (sometimes called “carrying charges”) to the LEHC to cover costs of the mortgage, property taxes, maintenance, and other costs. This is different from a condominium where there may be little to no debt against the entire property but where the individual residents must borrow a considerable amount of money to purchase their unit, with the mortgage secured against individual condominium units and paid by each household. So regarding financing, the CLT should consider whether residents would be capable of obtaining a condominium home mortgage from a bank or other lender, how much residents might be able to contribute in financing the property, what other sources of funding are available, etc. In some cases, CLTs are able to use outside funding or their own

equity to bring down the size of the blanket mortgage to ensure that maintenance payments are affordable to LEHC shareholders.

- **Subdivision Laws:** Regarding subdivisions, generally speaking condominiums, cooperatives, and other shared resident ownership properties are legally subdivided, meaning they must go through state *and/or* local government regulatory approval at the initiation of the project (see Section 5 re: Condominiums for more detail on subdivision laws). However, any property containing 4 units or fewer is exempt from the state Subdivided Lands Act regardless of ownership structure.<sup>6</sup> For projects consisting of 5 units and above, by default LEHCs are subject to the same subdivision requirements as condominiums, but there is an exemption specifically for LEHCs which conform to severe restrictions on member equity in the property among other conditions.<sup>7</sup> Even so, in most local jurisdictions there are regulations which require submission of maps and other materials to the local planning department for review. In some cities there are some exemptions for affordable housing projects and sometimes specifically for LEHCs from certain fees or there are streamlined approval processes (e.g. San Francisco, Berkeley). Therefore, one reason to develop a LEHC on CLT land (instead of condominiums) is the cost and time savings resulting from exemptions from some or all of the subdivision requirements. Depending on the exact structure of the LEHC and applicable subdivision laws, the initial project development costs might be considerably lower as a LEHC compared to as a condominium.

**About Resident Equity and Resale Formulas in LEHCs:** In a nutshell, California's LEHC law allows a LEHC member to sell their share back to the cooperative for the price that a member originally paid for the share plus accumulated simple interest (plus, if applicable, the value of board-approved improvements installed at the expense of the member). The interest rate is capped at 10% per year, so the LEHC may choose an interest rate within that limit in the law and typically this rate would be specified in the LEHC's bylaws.<sup>8</sup> The CACLTN model LEHC-CLT ground lease provides for the CLT to have approval rights over changes to the LEHC's bylaws so the CLT could insist on an annual interest rate of something less than 10% (as some CLTs with LEHCs on their land do). CLT practitioners, residents, and their legal counselors should study Civil Code Sections 817 through 817.4 along with their LEHC's proposed or adopted bylaws (and other corporation policies, lease

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<sup>6</sup> Section [11000](#) of the Business and Professions Code.

<sup>7</sup> See Business and Professions Code Section [11003.4](#) (b) for a full list of conditions of the exemption for LEHCs from the California Subdivided Lands Act, including that member equity in aggregate represents no more than 10% of the development costs of the property (or up to 20% if a mobile home park).

<sup>8</sup> This list is a paraphrasing of California Civil Code Section [817](#) (b)(1), please review the statute for more nuanced detail, especially with regards to prior existing LEHCs.

agreements, etc.) to fully understand the restrictions on the extent to which residents can realize any gains in the value of their membership or share in the cooperative.

The goal of the LEHC statute is to keep the purchase price affordable for subsequent buyers, and as such it greatly limits the extent to which current residents can profit compared to homeowners of conventional market properties. While share prices in LEHCs vary and there is no set formula in the law for determining the share price, it is typically substantially larger than a deposit on a rental property but less than buying into a market rate condominium or other market rate housing. Most apartment building LEHCs in California have a membership share purchase price in the range of \$3,000 to \$40,000. Given these limitations and the fact that many LEHCs choose to conform to the strict limitations on membership share prices in order to qualify for an exemption from state subdivision regulations, the LEHC model often results in considerable limits on the resident equity ownership stake in the property.

CLTs seeking to emphasize resident wealth building opportunities can consider a LEHC that fully complies with state level subdivision regulation. This choice would be more onerous to establish, but it could facilitate more resident economic participation and wealth building opportunities while balancing preservation of affordability over the long term. Another option to consider for maximum resident wealth building opportunity within the CLT context would be a condominium on CLT land, with a resale formula that accommodates greater increases in purchase prices over time and/or based on the value of capital improvements, discussed in the next section.

## 5) Condominiums Owned by Individual Households on Land Leased from the CLT

### How it Works with a CLT

In a residential condominium, the property is legally *subdivided* through a regulatory approval process such that residents can own their individual unit, and they may together own common areas (e.g. a building entryway, gardens, etc.) as members of a homeowners' association (HOA). This is different from a cooperative where a cooperative or nonprofit corporation owns the entire property and residents are voting members or shareholders in the corporation, with rights to occupy a unit. Condominium residents typically obtain their own individual mortgages to purchase their individual units, which is something that the process of subdividing the property helps to achieve. CLTs are involved with condominium development in two distinctly different ways. The first is as the developer, with the CLT doing the project as either (a) all-affordable, or (b) mixed-income, but with

affordable units very much in the majority. The second is in the context of inclusionary housing, where the CLT will be involved with a very small minority of units (most typically 15%) from a larger project typically led by a for-profit developer. This memo will focus on the scenario where the CLT is the developer. For CLT-developed condominiums, there are three options when it comes to ground leases.

- The first option is that the CLT will lease the land under a primary (or “master” lease) ground lease arrangement with the condominium owners association. Affordability controls are implemented via the ground lease, deed restrictions, and/or land use restriction agreements. Wherever possible/practical, embedding affordability controls in the ground lease provides the most durable form of protection.
- The second option, which is most common in California, are individual ground leases between the CLT and each condominium unit owner tied to the undivided interest in the common elements of the condominium.
- And the third option is for no ground lease at all, with the land owned outright by the condominium owners association. Affordability controls are implemented via deed restrictions and/or land use restriction agreements. This arrangement is less optimal from a property tax perspective and from the perspective of long term affordability restrictions.

### **Legal Documents Needed**

- 1) Declaration of covenants, conditions, and restrictions (“declaration” or “CC&Rs”)
- 2) Bylaws of the homeowners’ association
- 3) Condominium plan containing detailed maps and descriptions showing the different individually owned units
- 4) Ground lease: primary lease or individualized ground leases between CLT and homeowners’ association or individual homeowners
- 5) Affordability controls: which can be embedded in the ground lease, through deed restrictions, and/or the condominium declaration
- 6) Materials for a public report from the California Department of Real Estate: maps, real estate disclosure statements, budgets, and numerous other materials plus application fees<sup>9</sup> to constitute a complete application for a public report to be submitted to the California Department of Real Estate for approval (assuming the condominium is 5 units or more and no exemption from the CA Subdivided Lands

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<sup>9</sup> As of this writing, public report fees to DRE can range from \$2,000 to \$7,600, depending on details of the project, however, applicants often spend considerably more in preparing the application materials, because professionally drawn maps are required and applicants often hire an attorney to help prepare the application so total fees will likely be tens of thousands of dollars to get a public report.



Act applies). See California Subdivision Public Report Application Guide and other materials available from the Department of Real Estate at <https://www.dre.ca.gov>.

- 7) Materials for local subdivision approval: maps and additional application materials plus application fees must be submitted to the local (i.e. city or county) planning department for review and approval. Application fees, requirements, and steps involved can vary considerably from one city to another (some cities have fee waivers for affordable housing). Meet with your planning department early in the process to learn exactly what requirements apply to your project.

### Things to Discuss with a Lawyer

- 1) Should we consider incorporating some market-rate units? If so, what percentage mix would meet the IRS safe harbor requirements for 501(c)(3) nonprofits? Would our agreements with funders allow for any market rate units?
- 2) How should the ground lease be structured, choosing between the options of primary/master lease, individual ground leases, or land ownership by the condominium owners association? Furthermore, which of these options would result in beneficial property tax treatment?
- 3) How best to structure affordability controls for maximum durability over the long-term?
- 4) What role might we want to build in for the CLT in the governance of the condominium owners association?
- 5) How can we define repair and replacement responsibilities in the Declaration to avoid undue burdens on individual unit owners?
- 6) Are there any statutory leasehold condominium issues to be considered?

### When this might be a good model for your property

#### Condominiums Compared to LEHCs

- **Financing:** As explained in the section on LEHCs, in condominiums, each resident household has its own financing for its own unit. Compared to LEHCs, condominiums are more widely accepted in the marketplace, by buyers and lenders alike. Despite some challenges with this model during the great recession in 2008, financing for construction and end-buyer mortgages of condominiums are usually available, though this will vary based on local markets. Financing for condo buyers is *much* easier to obtain than for cooperative buyers. For CLT-developed condominiums, the first project is a very big lift. There is the complexity

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of multifamily housing, a complex set of legal documents, and the possibility of providing market-rate units (whose buyers bring a very different set of expectations). But if you want to do a multifamily ownership project with ready access to construction and mortgage financing, it can be a good option.

- **Subdivision Laws:** Condominiums are almost always subject to the state subdivided lands act, therefore, they need to go through state-level regulatory approval (unless they contain 4 units or fewer). The local government may require the applicant to make public infrastructure improvements as a condition of approval of the subdivision. There may be considerable fees owed for approval of the development. Unlike LEHCs, there are not as many exemptions from subdivision laws applicable to condominiums.

**About Resident Equity and Resale Formulas in Condos:** Unlike cooperatives organized pursuant to the limited-equity housing cooperative law, there is no limited-equity condominium law in California so in this model, CLTs are free to set their own resale formulas that allow greater resident equity accumulation and potentially greater opportunity for wealth building in the form of homeownership compared to all of the other options described in this memo.<sup>10</sup>

Generally speaking, condominium-based approaches do not reach as deep an affordability level as rental housing or housing cooperatives on CLT land. This is due to a number of factors, including the need for buyers to be mortgage-ready, with the necessary credit scores, employment history, and downpayment funds and the fact that there are generally fewer government and philanthropic funds for homeownership housing compared to rental housing. In condominiums, the residents themselves are likely providing a key source of project capital in the form of downpayments and mortgages taken out and paid for by individual residents on their own units. Thus, condominiums are often more feasible for moderate income households. CLTs may wish to explore opportunities for condominium developments that cater to a wide array of income levels, perhaps even including market rate units which offset some of the subsidy needed to make other units affordable to low- and very low-income households.

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<sup>10</sup> For a discussion on different approaches to CLT resale formulas, see Chapter 12 of the Community Land Trust Technical Manual, [published](#) by the National Community Land Trust Network (now Grounded Solutions Network) in 2011. See also CACLTN's forthcoming Guide to Capital Improvement Policies which will be posted [here](#).

## SUMMARY TABLE

	1. Rental Housing on CLT Land	2. Rental Housing on CLT land with a Resident Council	3. Resident Operated Nonprofit (RON) Leases Land and Building(s) from CLT	4. Limited-Equity Housing Cooperative Owning Building(s) and Leasing Land from CLT	5. Condominiums Owned by Individual Households and Leasing Land from CLT
Who owns what?	CLT owns the entire property, OR property management company owns improvements and CLT owns land with lease to property manager. Residents are renters of their unit.	Same as Option 1.	CLT owns the entire property and RON leases it all from CLT. Each resident is a tenant who rents their unit from the RON.	LEHC owns the building(s). CLT owns the land and leases land to LEHC. Each resident household owns a share or membership in the LEHC corporation. Owning a share entitles one to occupy a unit. Residents also typically pay periodic maintenance or carrying charges (similar to paying rent, however, the amount might be adjusted based on the LEHC budget)	Each resident household owns their individual unit. There might be common areas owned by the residents together as a homeowners' association. The CLT owns the land. Like in a LEHC, residents may have to pay dues to the homeowners' association, the amount of which might be adjusted on what it costs to maintain the property.
Move-in Cost	Security deposit + first month's rent	Security deposit + first month's rent	Security deposit + first month's rent	Membership share (typically \$3k-\$40k) + first month's rent or maintenance dues	Purchase of condominium plus first month (or quarter, or...) of HOA dues.
What happens upon move-out?	Security deposit returned, as appropriate.	Security deposit returned, as appropriate.	Security deposit returned, as appropriate.	LEHC repurchases membership share for the price paid by the outgoing member + the value of improvements installed at the expense of member + accumulated simple interest.	Condo association or CLT or next resident purchases the unit based on a formula set by CLT/condo policy.

<p>Wealth Building Opportunities</p>	<p>CLT renters benefit from stable below market rate rents, so while they do not have an investment in their home which grows in value like homeowners do, they are able to save money.</p>	<p>CLT renters benefit from stable below market rate rents, so while they do not have an investment in their home which grows in value like homeowners do, they are able to save money.</p>	<p>CLT renters benefit from stable below market rate rents, so while they do not have an investment in their home which grows in value like homeowners do, they are able to save money.</p>	<p>LEHC memberships can increase in value over time, but only by a simple interest rate no more than 10% per year (often a lesser amount), thus there is some wealth building opportunity in purchasing a membership but much less than in market-based homeownership. Additionally, the price paid for the membership share which accrues interest is often much smaller than purchasing into a condominium or market rate cooperative. Additionally, like CLT renters, LEHC members typically enjoy below market rate rents on their unit which facilitates building their savings.</p>	<p>Condominium owners on CLT land may benefit from as much equity appreciation as is allowed by the CLT's resale formula, which might be similar to LEHCs or might allow slightly greater appreciation in value.</p>
<p>Can residents leave their unit to their heirs upon death or transfer their units to family members upon move-out?</p>	<p>Typically rental units are not passed onto family members or heirs. Potentially a CLT could have a policy of giving preference to an heir who is income qualified but oftentimes government funding will require vacancies be filled through a lottery or waiting list which would preclude leaving units to heirs.</p>	<p>Same as Option 1.</p>	<p>Same as Option 1. Additionally, RONS often are structured to give the current residents approval rights over new residents so some RONS may not want a policy that automatically transfers a unit to someone's family member.</p>	<p>Depends on LEHC's policies. CA law requires LEHC members use the unit as their permanent residence so heirs must live in the unit or sell the membership back to the LEHC and keep the proceeds from the sale. Like with other models, the heir would likely need to income qualify and terms of funding could interfere.</p>	<p>Depends on the condominium's policies regarding transfer of units and what the CLT ground lease says about vacancies, but likely yes, the unit can be inherited. This may also be affected by funder requirements and/or the CLT and condominium association policies.</p>

<p>Governance and Management</p>	<p>CLT is generally in control (or the property manager chosen by CLT might be in control) but residents might form an advisory group to advise on property management.</p>	<p>CLT and residents have an agreement on specific roles where residents have control, perhaps selection of new residents, house/building rules, and some say in major renovations. Otherwise CLT is generally in control. CLT and/or residents might choose to hire a professional property manager to assist with certain matters.</p>	<p>Residents control a corporation which has a primary lease over the whole property, thus residents have powers and responsibilities for filling vacancies, setting house/building rules, collecting rents, and perhaps other matters like renovations, etc. The RON-CLT lease will detail rights and responsibilities of each party. Residents can also choose to hire a professional property manager.</p>	<p>Residents control a corporation which owns the improvements and has a lease for the land, thus residents have powers and responsibilities for filling vacancies, setting house/building rules, collecting rents, and perhaps other matters like major renovations, budgets, etc. The LEHC-CLT ground lease will detail exact rights and responsibilities of each party. Residents can also choose to hire a professional property manager.</p>	<p>Residents likely will have a homeowners' association which sets certain rules and may be involved in choosing new residents, among other rights and responsibilities. The condo-CLT ground lease will detail exact rights and responsibilities of each party. Residents can also choose to hire a professional property manager.</p>
<p>Property Tax</p>	<p>Eligible (likely) for the property tax welfare exemption if residents are lower income.</p>	<p>Eligible (likely) for the property tax welfare exemption if residents are lower income.</p>	<p>Eligible (likely) for the property tax welfare exemption if residents are lower income. However, because there are two different legal entities in this model (unlike other rental models) there will be additional paperwork.</p>	<p>Likely ineligible for the property tax welfare exemption, but may be eligible for some tax relief pursuant to new property tax laws for CLT properties.</p>	<p>Ineligible for the property tax welfare exemption, but may be eligible for some tax relief pursuant to new property tax laws for CLT properties.</p>