

Considering Donating or Selling Property to a Community Land Trust?

The donation or discounted sale of real estate to a **Community Land Trust (CLT)** is a profoundly impactful way of leaving a legacy in the local community. A CLT is a charitable organization whose mission and specialty is the stewardship of permanently affordable housing and community facilities in accordance with the values of the local community. CLTs throughout California have built up a network of professionals and experts who support each other to further this mission with care and integrity. For more information see:

<https://www.cacltnetwork.org/california-clt-definition/>



Interested in Donating or Selling Property to a CLT?

There is a broad spectrum of options for property owners who want to transfer their property to a CLT. They can donate the full value or sell for a discount (bargain sale). They might choose to donate/sell today or to do so at some point in the future. Listed below are some of the more common scenarios which address a variety of donors' situations and needs.

Options for Structuring the Value of the Sale or Donation

- **Gift of Property.** The owner donates full title to the property to the CLT. The donor may be eligible for a tax deduction based on the value of the property donated. Donors should consult with their tax advisors about tax benefits.
- **Give your home, but continue to live in it.** In some circumstances, a homeowner and a CLT may find it mutually beneficial for the homeowner to make a partial gift of their property to the CLT during the homeowner's lifetime, with the remainder of the property to be transferred after their death. This might be accomplished through one of a few legal mechanisms:
 - **Life Estate.** A "life estate" occurs by executing a special kind of deed that provides one person the rights to use a property for the duration of their life, and on that person's death, the property automatically goes to the owner of the "remainder" interest in the property. A homeowner would hold a "life estate" while giving the "remainder" rights to a CLT. Typically, the holder of a life estate pays for property taxes, maintenance, insurance, and other expenses associated with maintaining the property for the duration of their life.
 - **Gift of Land Only.** Another mechanism for donors or sellers who want to remain in their home for some time would be for a donor or seller to keep title to their home while gifting or selling the underlying land to a CLT. The CLT and homeowner would then enter into a ground lease of the land under the home. A typical CLT lease lasts 99 years and contains covenants which restrict future sales of the home to

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qualified (low or moderate income) homebuyers at an affordable price. The CLT ensures that the home will continue to be permanently affordable to future buyers through the terms of the ground lease (aka 'land lease').

- **Sale or Gift of Property with Lease Back.** A homeowner could gift or sell their entire property to a CLT and then lease it back as a tenant for some period of time. This might be something to consider for homeowners who are having difficulty with the responsibilities of maintaining their home but who would like to remain in place.
- **A Bargain Sale:** A "charitable bargain sale" occurs when a seller of real estate sells their property at a price below "market rate," effectively donating a portion of its value. When the buyer is a CLT or other 501(c)(3) tax-exempt organization, the seller may be eligible for a tax deduction on the donated value of the property. For the seller to get any tax benefits, there must be an appraisal done to document that the sales price was indeed a "charitable bargain sale." Sellers should confer with their own tax advisors on these transactions.



Donations or Bargain Sales via Wills and Trusts

Many of the above options can be done through a will or trust.

- **Bequests:** Donors who want to keep their property for the duration of their lifetime, but who want a CLT to own their property after they pass away, may choose to leave their property to a CLT in their will or trust. Another option is to record a revocable "transfer on death deed" in the county recorder's office, instructing that the property be transferred to a CLT upon the death of the former owner. Since improperly prepared and executed bequests can be contested and ruled invalid after the donor's lifetime, it is critical to work with qualified professionals, particularly the donor's own estate planning attorney, to ensure all documents have been appropriately drafted and executed.
- **Bequest (with a Bargain Sale):** A donor, through their will or trust, can offer a CLT the chance to purchase their property from their estate when they pass away for a discounted price. This option will provide the opportunity to convert the property to permanent affordability in the CLT model, as well as providing a financial bequest to heirs.



Future Sale to a CLT

For those who are not yet ready to transfer their property, but know that they want to give a CLT a future opportunity to purchase it, you can offer a CLT the right to purchase in the future.

- **Purchase option or purchase right.** If you know that you want to sell your property to a CLT but you or the CLT are not yet ready to do so, you and the CLT might negotiate a purchase option, or in other words, an agreement that the CLT has a right to purchase the property during some future window of time. The purchase option may be conditioned on a defined future event, or it may be for some fixed window of time during which the CLT has the right to purchase the property. If the CLT has not exercised its right to purchase during the option period, then the right to purchase expires. Usually the person who holds the option (in this case the CLT) pays a fee for the option, whether the option is ever exercised or not. Often, that fee is applied towards the purchase price if the option is exercised.

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- **Right of First Refusal.** A right of first refusal gives the CLT the right to offer to purchase the home once you list the property for sale, and prior to you negotiating or accepting any other offers. Unlike the purchase option above, there is no legally binding requirement for the seller to sell; the CLT's rights are contingent on the owner deciding to sell. This might be a good choice for donors who are not yet ready to sell their property and are unsure when they might want to sell, but who have decided that if they do sell, they want the CLT to have the first opportunity to purchase it.

In the case of options and rights of first refusal, these rights usually last for some duration of time, after which they expire and the CLT will have no rights different from any other potential purchaser on the open market. In both the case of an option or a right of first refusal, the price might be predetermined at the time that the option or right of first refusal agreement is signed, or they might provide that the purchase price will be market rate or some portion of market rate, to be determined by an appraisal at the time of the sale.

Donors should get the advice of their own estate planning attorney and tax professional regarding any of these options to make sure they have appropriately drafted and signed all relevant documents, and that they fully understand all of the tax implications of the specific transaction as relevant to the donor's particular tax situation.



Why Donate or Sell to a CLT?

Possible Benefits of Donations or Bargain Sales include:

- **Tax Benefits:** As discussed above, in circumstances where someone donates a property or sells it at below market value, there may be potential tax benefits for the seller/donor, particularly when the market value of the property is considerably higher than the bargain sale price. For more information about tax benefits associated with donations of property and charitable bargain sales, see [IRS Publication 526: Charitable Contributions](#) and [IRS Publication 544](#) Chapter 1. ***In every transaction, it is crucial to consult your tax advisor to assess your particular situation.***
- **Stability for Current Occupants:** Selling or donating your property to a CLT can provide stability and trusted property management for existing occupants of the property whether they be homeowners or tenants. Additionally, it increases the possibility that the current occupants could become future owners of their home.
- **Legacy:** Selling or donating your property to a CLT ensures the property will be used as affordable housing long after you have passed away.

Regardless of your motivation, donating or selling to a CLT ensures the affordability of the home *in perpetuity*. It is one of the most enforceable mechanisms for guaranteeing affordability. This is accomplished through the CLT land lease, the 99-year, renewable recorded document imposing affordability and occupancy restrictions on the property.

Taking the Next Step - Understanding the Donee's (CLT's) Needs & Considerations to Help You Prepare

Offers of donated and discounted-sale properties are incredibly profound and appreciated by CLTs. However, not every property or situation is a good fit. The following considerations will help give important context and prepare you for more effective and productive conversations with the CLT to take the discussion to the next level.

With any donation or discounted sale, a CLT's priorities typically are:

- Adding homes and community facilities to its portfolio.
- Converting market-rate housing into permanently affordable housing (both resident owned, and rentals).
- Ensuring that the properties will be financially sustainable, i.e. that they will generate adequate cash flow during the transition period (if currently owned as a rental), and will provide adequate compensation for property management roles if taken on by the CLT, e.g. in a life estate or a future transfer.

Due to limited staff time and resources, CLTs need to quickly do an initial assessment to determine if a potential donation is worth investing more time and resources into pursuing further. Key considerations are:

- Is it suitable as affordable housing?
- Will both the transfer of the property and long-term stewardship of the property be financially feasible and sustainable?
- Are there any major issues, such as natural disaster risks or environmental remediation needs? CLTs are generally not in a position to speculatively take on a property which is likely to be a net loss even for an interim period (i.e. the property has needs/issues whose costs could exceed the value of the donation or bargain sale).

CLT staff will also need to assess the likelihood of their meetings with donors and feasibility research will lead to an eventual transfer. Their goal is to avoid a prolonged exploration of a donation when the donor isn't sure of what they want. A donor can really help this process along by disclosing up front any important details that would either radically change the overall 'deal', or make the project unfeasible.



How donors can prepare for a productive initial discussion with a CLT

- **Research and define your financial needs/goals in this transaction.** The more you can define your specific financial needs, the more quickly you and the CLT can decide if this is worth investing the time and resources to pursue further:
 - How much is desired in net sale proceeds (for bargain sales)?
 - For retained life-estates: How much of the ongoing ownership costs can you keep paying? For rental properties, how much of the cash flow is needed?
 - How much of a charitable deduction is desired?
- **Get clear about your honest needs and wishes with respect to the property.** Is it to stop managing a rental? To continue to live in the home? If so, for how long? Is it to dedicate the property to a particular charitable purpose? To realize a particular tax benefit?

- **Gather and share information about the property:**

- **Property Financials.** For rental properties, two years of income/expense statements, a rent roll, a history (and costs) of repairs and capital improvements made. All of these will greatly speed up the process of analysis for the CLT. This information will be essential for a bargain sale.
- **Physical condition of the property.** A history of repairs/improvements, including permit history (or issues) up front is very helpful to help the CLT assess the need for potential repairs or a rehab.
- **Condition of Title.** Consider requesting a preliminary title report; compile all of the documents for any liens on title (such as mortgage documents etc.).

- **Consider having an early conversation with your family members and potential heirs about your intent to donate or make a bargain sale.**

The more information you can provide, the more quickly a CLT can assess the viability, and move forward with an actual transaction.

Lastly, be prepared to execute a written agreement with the CLT documenting your intent (and the terms thereof) to donate. Some organizations might require this as a threshold/milestone for deeper engagement after conducting an initial assessment. Even just executing a preliminary letter of intent or MOU with the CLT can be very productive for documenting in plain language the terms of the bequest/donation, restrictions, intent etc. to avoid potential misunderstandings down the road.

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