

Strategies & Advice for CLTs Receiving Donated & Bargain Sale Properties

The following strategies and tips are intended as a high-level overview for **Community Land Trusts (CLTs)**, rather than a detailed ‘practice guide’, and as such are intended to provide jumping off points for CLTs to further develop policies and tools for pursuing donated and bargain sale properties.



Messaging and Interfacing with Potential Donors

- **Focus on building community enthusiasm and motivating potential donors.**
- **Initial Donor Contact Guidance:**
 - Your interest is in the impact of the gift to the community, not financial or tax implications for the donor.
 - Your duty is not to advise the donor on the inheritance and tax implications of planned giving. Lawyers and financial advisors do that.
 - Always recommend the donor consult with their own advisors (CPA, attorney, etc.) to ensure that they fully understand and agree with the documents that your organization’s real estate advisors are putting together. Having one attorney (and/or CPA) representing both the donor and your organization can lead to conflicts of interest and potentially even prompt legal challenges to a donor’s will or trust.
 - Your job is to excite the donor about the opportunity to leave a lasting legacy they can be proud of, that carries their values and connections forward. Your job is to inspire the donor.
 - When you visit with prospective donors, you have two objectives:
 - Bring out information about the donor’s experiences, values, worries, needs, desires, financial needs, relationships, and the condition of their financial/legal/tax/retirement/estate plans.
 - Learn what the donor wants to do in the world, what the donor wants to give to future humankind, and how your organization might accomplish any of those things.
- **It never hurts to pitch a bargain sale to every seller with whom you are negotiating an acquisition.**



Preliminary Phase Feasibility Assessment

- **Establish a basic level of commitment from the donor to sift out casual or ambivalent inquiries, and isolate potential projects with a higher likelihood of success.** One way to do this could be to outline a written agreement with the donor (such as an MOU, gift agreement or a letter of intent) and at a certain threshold, require donors to execute the agreement before the CLT spends more resources on investigating the feasibility of the anticipated gift or transaction. While a typical agreement would be non-binding, this still shows parties are taking the process seriously.

• Initial Feasibility Budget

- Make a budget for how much you are willing to expend for the potential transaction including:
 - Due diligence costs (such as CPA, attorney consultations, property inspections) and staff time
 - Donor costs (e.g. escrow, tax arrears, etc.) if donor requires.
 - Immediate and short-term repairs
- Assess project feasibility with a ‘back of the envelope’ pro forma and sources/uses budget.

• Ethical

- Be alert to signs that call into question the donor’s competence to make legal/financial decisions, particularly elderly donors.
- Establish buy-in/agreement with heirs.
- Ensure that donors are represented by an independent attorney.
- Consider creating an ethics review process (i.e. having an unbiased, disinterested party or entity review each transaction to avoid even the appearance of exploiting vulnerable elders).

- **Property Condition** – Do a walk-through to check foundation/crawl-space, evidence of systems issues (plumbing, electrical, structural), the condition of fixtures and finishes, and identify potential big ticket issues. The focus at this point is a ‘rough order of magnitude’ estimate of rehab or repair needs, to rule out properties that would likely cost more than the CLT’s budget for the project.

- **Timing** – Assess the feasibility of closing the transaction within the expected timeframe of the donor/seller.



The “Serious Stage” of Assessing the Transaction

This phase involves meaningful expenditure of funds and staff time and should only start once you have secured a baseline level of commitment from the donor, ideally evidenced by an MOU, a gift agreement, or similar writing.

• Due diligence:

- An appraisal will be necessary for a donor to claim a tax deduction, and one may be required by a lender if the CLT will need institutional financing (even if just for repairs). Typically, appraisals need to be done in close proximity to the date of transfer so check on your lender’s requirements as well as the donor’s needs for claiming any tax deductions.
- Capital Needs Assessment (CNA) or contractor inspections

- **Legal** – Conduct a review of the legal feasibility of the donor’s desired outcome especially if the donor will remain in their home or place any other conditions on the transfer. Review any complicating title issues, and/or issues with heirs. Draft and finalize the transaction documents and terms.

• Meetings and discussions with family members and heirs to seek buy-in

Some characteristics of successful transactions have been willing, patient sellers and those in which the CLT has established a trusting relationship with the seller/donor. If these characteristics are not developing, it could be a sign to disengage sooner than later.



Negotiations and Transaction

- Seek written approval of family members and heirs, particularly for bequests.
- Ensure the donor has their own attorney representing them.
- Ensure support of an elder care organization for age-in-place projects.
- In situations with less sophisticated donors, the CLT will likely need to help walk the donor through the process, ideally through a competent and reliable third party.
- **The CLT should identify professionals such as an attorney or real estate broker who will assist them in the transaction.** Additionally, the CLT might consider creating a separate referral list (or bench) of professionals who can assist potential donors or sellers who need their own legal and tax advisors. Focus on particular professionals who understand CLTs and the goals of donating property (i.e. who won't undermine the donation process).
 - Attorneys that specialize in estates/trusts; donations; real estate law
 - CPAs or other tax experts
 - Appraisers
 - For CACLTN membership-wide list, see: [Donations/Bargain Sales Professionals](#)



When you have to say 'No thanks'

- Create a role-play/script for turning down donors, especially ones with whom the CLT has invested significant time.
- Consider tracking these properties/owners as part of a “Serious Interest” cases list for periodic (e.g. annual) follow-up communications.



One Behind the Scene Consideration - Protecting CLT's Public Charity Status

Among section 501(c)(3) organizations there are two categories of organizations: private foundations and public charities. To maintain **public charity status**, the organization must continually pass a “public support test” showing that a certain portion of its funding “normally” comes from “public sources” such as government grants, small donations, membership dues, etc. Having too large a fraction of the organization's revenues come from a single source (such as a property donation) can lead to failing the “public support test”. However, there is an exception for “unusual grants”. The IRS uses a ‘facts and circumstances’ test (rather than a clear and simple rule) to determine whether a donation counts as an “unusual grant”. Some favorable ‘facts and circumstances’ could include: that the donor is not a person with control over the organization (e.g. a founder, director, officer, etc.); that the donor has not imposed restrictions or conditions on the donation; that the organization has a diverse governing board, or, in the case of a membership organization, has a broadly elected board. CLTs should consult with tax or legal advisors on classifying a gift as an “unusual grant” on their tax filings.