

**Title Companies and Community Land Trusts:  
Partners for Permanent Affordability**

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**Affordable Home Crisis**

- Median home prices are beyond the reach for the workforce earning a median wage in many Montana communities.
- Rental market is tough too.
- Dilemma has many repercussions.
- One solution – Community Land Trusts (CLT).



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**What is a CLT?**

- A CLT is a non-profit organization that holds land for benefit of the community.
- The model can be used to hold farmland, commercial property, and other community assets in trust to keep it affordable in perpetuity.
- Community members and CLT homeowners ideally serve on CLT Board.



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### How does a CLT work?



- Homeowners, businesses, or farmers purchase the improvements but not the land.
- The CLT owns the land in fee simple estate.
- A ground lease for the use of the land outlines the rights and obligations of the CLT and homebuyer to ensure maintenance and affordability.



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### Continued Affordability



- The CLT takes the cost of the land out of the home's purchase price.
- Homebuyers may also take advantage of additional subsidy to lower the purchase price of the home, (down payment assistance, etc.).
- The terms of the ground lease ensure that the subsidy is not lost on resale. The homebuyer, who gets a great deal on a CLT home, agrees to pay it forward to the next qualified homebuyer.



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### The Ground Lease

- **Homeowner restrictions:**
  - Resale price limited by formula (limited market equity)
  - Resale to other income-qualified buyers only
  - Use as the primary residence
  - CLT retains a right of first refusal
  - Continued upkeep and maintenance required
- **Homeowner benefits:**
  - Owns home
  - Earns equity – grow wealth
  - Reduced purchase price (affordable)
  - Homeowner education
  - Long-term stewardship support
  - Stable housing costs
  - May devise home to heir



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## Is That Legal?

- It is legal to divide interests in real property horizontally - separate the land from the improvements.
  - Libby Placer Mining Co. v. Noranda Minerals Corp. (Mont. 2008)
  - MCA 70-1-106: both land and improvements constitute real property
- Resale restrictions on real property have been upheld in Montana - if reasonable and necessary to arrangement.
  - Edgar v. Hunt (Mont. 1985)
  - Baker v. Berger (Mont. 1994)
- Montana State Law recognizes CLTs
  - MCA 70-23-102(6)
- Federal Law recognizes CLTs
  - Cranston-Gonzalez National Affordable Housing Act, Title II



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## History of CLTs

- 1969 – New Communities, Inc., Albany, Georgia, grew out of civil rights era effort to establish a new form of tenure ownership for black farmers and their families.
- Today there are over 280 CLTs in 45 states and the District of Columbia.



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## CLT Progress in Montana



### Six (6) CLTs in Montana

- NMCDC
- NWMTCCLT
- HRDC Bozeman
- Big Sky CHT
- Headwaters CHT
- Trust Montana
- Over 250 CLT homes across the state



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### Long-Term Potential



- Over a 50 year period, one CLT home can offer seven families a chance at homeownership.
- 6 of 10 CLT homeowners use earned equity to purchase a traditional market rate home.
- Over 99% of CLT homeowners avoid foreclosure.
- 95% of CLT homes continue to be priced affordably (under 30% of monthly income).
- 7 of 10 CLT homeowners are first time homeowners.



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### Varied Processes

Home = Improvements

- CLT acquires property, refurbishes the home, and sells the home to a qualified buyer, keeping title to the land in the CLT.
- CLT acquires raw land, develops a home, and sells the home to a qualified buyer, keeping title to the land in the CLT.
- Developer owns raw land, develops a home, transfers the land to the CLT and sells the home to qualified buyer.
- Buyer purchases entire property with CLT funding help, transfers land to CLT and keeps title to home (buyer-initiated program).
- CLT assists a CLT homeowner in re-selling their home to another qualified buyer, keeping title to the land in the CLT.



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### Role of Title Companies

- Title Search and Abstract of Title
- Title Commitment
  - provide/recognize separate descriptions for the land and the improvements.
  - commitment could be for fee simple in property with notation of limited insurance.
- Issue Title Insurance
  - Loan policy & owner's policy = fee simple interest in the improvements and a leasehold interest in the underlying land.
  - CLT's interest = fee simple interest in the underlying land subject to a long-term ground lease.
- Oversee Escrow and Closing
  - Review closing documents prior to closing date.
  - Manage and protect documentation.
  - Manage and disburse funds.



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## Title Search & Abstract of Title - Looking at Different Scenarios

- New CLT Property - land held by CLT already
  - Title search shows CLT as owner of property
- New CLT Property - land to be transferred to CLT at closing
  - Title search shows developer as owner of property
  - Title search shows prior owner if buyer initiated
- CLT Re-sale - Home selling from one owner to the next
  - Home seller will have a leasehold estate (fee simple interest in the improvements and leasehold in the land)
  - CLT will have a fee simple interest in the land
  - Termination of Ground Lease will be recorded for the seller of the home
  - Notice of Ground Lease will be recorded for the new buyer
    - May request copy of complete ground lease
    - CLT must be involved in re-sale of property as owner and lessor of the land underlying the improvements
      - Prevent breach of ground lease contract
      - New ground lease must be signed by the income-qualified purchaser



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## Title Commitment

Recall:  
Both land and improvements constitute real property which can be owned separately.

Title commitment is for the **leasehold interest** in the land - CLT home buyers purchase the improvements in fee simple and lease the underlying land - requires separate parcel descriptions.


**Parcel I**

The improvements only, located on Lot 9, Block 3 of Certificate of Survey No. 112233 of the Treasure State Subdivision Plat Z-123, City of Day, Summer County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Summer County, Montana.

**Parcel II**

Lot 9, Block 3 of Certificate of Survey No. 112233 of the Treasure State Subdivision Plat Z-123, City of Day, Summer County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Summer County, Montana, EXCEPT any improvements located thereon.

\*Title policy is to insure fee title to Parcel I and a leasehold estate in Parcel II.



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## Pre-Closing Recommendations

Partners for Permanent Affordability



- Accept and review information from lender about upcoming sale.
- Request a release of title information from homebuyer for benefit of CLT, as required.
- Request income qualification approval letter from CLT.
- Request CLT identify an authorized signatory agent.
- Prepare the leasehold title commitment with separate Parcel I and Parcel II legal descriptions.
- Send the commitment to both the lender and the CLT.
- Review CLT documents and other closing documents and request changes early.
- **CLT documents need to be reviewed at least one week prior to closing to stay on schedule.**
- Understand the type of transaction or talk to the CLT to clarify the transfers that will occur at closing.



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**Documentation from CLT**

- Warranty Deed for transfer of the Land Only
- Warranty Deed for purchase of the Improvements Only
- Termination of Ground Lease (if it's a resale)
- Ground Lease Agreement w/ Exhibits
  - Letters of Acknowledgment from buyer's attorney
  - Legal Description of the Land being leased (Premises)
  - Permitted Mortgages
  - Lender's Rider
  - Limit of HOME Subsidy for 15 years (as applicable)
- Notice of Ground Lease or Abstract of Ground Lease
- Borrower's Authorization Statement



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**Escrow & Closing**

Scenario #1

CLT owns entire property and is selling improvements only to home buyer and entering a long term ground lease for use of the land OR CLT homeowner is selling to another qualified home buyer.

1. Warranty Deed for Improvements Only to homebuyer (recorded)
2. Termination of old Ground Lease, if a CLT homeowner is selling (recorded)
3. Ground Lease between homebuyer/lessee and CLT/lessor (fully executed document returned to CLT for internal filing)
4. Notice of Ground Lease (recorded)
5. Lender Rider Exhibit (recorded with Notice of Ground Lease)
6. Permitted Mortgages Exhibit (recorded)
7. Acknowledgement Letters Exhibit including Attorney Acknowledgement and Homeowner's Agreement (sent to CLT with the Ground Lease for internal filing)
8. Loan Agreement (lender's request)
9. Mortgage or Deed of Trust documents (all recorded in order of priority)
10. Borrower's Authorization Statement (provided to lenders)
11. Declaration of Homestead (recorded)



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**Escrow & Closing**

Scenario #2

Developer owns entire property and is transferring the land to the CLT and selling the improvements to a qualified home buyer. At the same time, CLT is entering a long term ground lease for use of the land with the new home buyer.

1. Warranty Deed for Land to CLT (recorded)
2. Warranty Deed for Improvements ONLY to homebuyer (recorded)
3. Ground Lease between homebuyer/lessee and CLT/lessor (fully executed document returned to CLT for internal filing)
4. Notice of Ground Lease (recorded)
5. Lender Rider Exhibit (recorded with Notice of Ground Lease)
6. Permitted Mortgages Exhibit (recorded)
7. Acknowledgement Letters Exhibit including Attorney Acknowledgement and Homeowner's Agreement (sent to CLT with the Ground Lease for internal filing)
8. Loan Agreement (lender's request)
9. Mortgage or Deed of Trust documents (all recorded in order of priority)
10. Borrower's Authorization Statement (provided to lenders)
11. Declaration of Homestead (recorded)



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**Escrow & Closing**

Scenario #3

Buyer initiated program, homebuyer purchases property, transfers land to CLT and keeps improvements.

1. **Warranty Deed for entire property to homebuyer** (recorded)
2. **Warranty Deed for Land ONLY** from homebuyer to CLT (recorded)
3. **Ground Lease** between homebuyer/lessee and CLT/lessor (fully executed document returned to CLT for internal filing)
4. **Notice of Ground Lease** (recorded)
5. **Lender Rider Exhibit** (recorded with Notice of Ground Lease)
6. **Permitted Mortgages Exhibit** (recorded)
7. **Acknowledgement Letters Exhibit** including Attorney Acknowledgement and Homeowner's Agreement (sent to CLT with the Ground Lease for internal filing)
8. **Loan Agreement** (lender's request)
9. **Mortgage or Deed of Trust** documents (all recorded in order of priority)
10. **Borrower's Authorization Statement** (provided to lenders)
11. **Declaration of Homestead** (recorded)



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**Title Insurance**

- **Lender Policy**
  - Policy is to insure fee title to improvements and a leasehold estate in the land as established by the ground lease.
  - Land and improvements must be defined as separate parcels.
  - Insurance in amount equal to the loan advanced.
- **Owner's Policy**
  - New CLT home buyer
    - Policy is to insure fee title to improvements and a leasehold estate in the land as established by the ground lease.
    - Insurance in amount the buyer actually pays for the improvements.
  - CLT
    - Policy to insure fee simple estate in the land.



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**Post Closing & Follow-Up**

- Send prorated first month's lease payment to CLT in accordance with the terms of the ground lease.
- Send any administrative fees collected at closing pursuant to the ground lease to the CLT.
- Send all long-form documents to the CLT for internal filing, including the Ground Lease and Acknowledgement Letters (from Attorney & from Homebuyer) Exhibit.
- Offer constructive feedback! How can CLTs make the process smooth for title agents?



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Questions?



Thank you to the  
Montana Justice Foundation  
which has supported  
Trust Montana in its efforts  
to provide CLT education  
around the state.



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