

COMMUNITY LAND TRUSTS: A Primer for Title Companies

A Product of Community Legal Resources
Community Land Trust Project
www.clronline.org/clt

I. BACKGROUND

A. What is a Community Land Trust?

A community land trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to ownership of housing for people who would otherwise be priced out of the housing market.

CLTs are unique in that they separate ownership of land and homes. CLTs permanently own the land on which homes and other structures or facilities are built, while individuals own the home (or other structure/facility) on the land pursuant to a long-term (usually 89-year) renewable ground lease.

The CLT model does not lend itself to a “hard sell”; informed consent is essential. CLTs work to ensure that prospective homebuyers know what they are getting and what they are giving up upon purchase of a CLT home. The ground lease entered into by every CLT homeowner requires that owners live in their homes as their primary residences. CLT homeowners and their descendants have a right to occupy and use the leased land for the term of the ground lease, provided that they abide by the terms of the ground lease. In exchange for an initial subsidy from the CLT that is built into the price of the home, the terms of the ground lease place some limitations on the resale of the home — preventing resale to a household that does not qualify as low- or moderate-income, and limiting the sales price to keep it affordable. The lease lays out a “resale formula” that determines the maximum allowable price that may be charged upon resale of the home. Each CLT designs its own resale formula to give homeowners a fair return for their investment, while keeping the price affordable for other lower income people. In addition, the CLT has the right to buy each home back for an amount limited by the CLT’s resale formula.

Typically, CLTs are used in neighborhoods that are experiencing or are expected to experience gentrification. In many communities today, population growth and economic investment are driving up real estate prices so that fewer low - and moderate - income workers can afford to buy homes or rent in the communities where they work. Limited public funds are available to subsidize housing costs for lower income households. However, the gap between the amount of subsidy needed and the amount of subsidy available for affordable housing continues to widen as housing costs soar.

According to the U.S. Census, from 1990 to 2000 the median value of owner-occupied homes increased by 97% in the State of Michigan. While housing prices have escalated, government funding for affordable housing has decreased, and private funders are unable to subsidize these projects at the level previously supported by the government. While CLTs do not build equity for low-income communities as fast as conventional homeownership would, CLTs are designed to serve a population that otherwise would not have homeownership opportunities in the current conventional market. In addition, the initial investment in the affordability of the housing is preserved for future owners, thereby maximizing the utility of that investment.

CLTs are being developed in a growing number of communities – in expanding metropolitan areas from Cleveland, Ohio to Portland, Oregon; in university communities from State College, Pennsylvania, to Boulder, Colorado; and in expensive resort communities from the Florida Keys to the San Juan Islands of Washington State. In Michigan, CLTs have been formed in Traverse City, Boyne City, and Oceana County, among others.

B. The “Basics” of the Community Land Trust Transaction

The deal that a CLT homeowner makes with the Community Land Trust is the ability to purchase an affordable house now in exchange for giving up a portion of the future appreciation of the home when the CLT homeowner sells the home later. Here is a brief outline of the typical terms of a CLT purchase:

- The Homeowner purchases the house but not the land (which lowers the purchase price) with a purchase money mortgage.
- The Homeowner leases the land from the CLT which retains the fee in the land.
- The term of the lease is usually 89 years; the lease can be renewed once for another 89 years.
- When the Homeowner sells his/her house, the sales price includes only a portion of the appreciated value so the home price is affordable for the next buyer.
- The primary mechanism to preserve the affordability of the house is an option to purchase in favor of the CLT in the mortgage and in the lease.
- The CLT home can be inherited.

1. The Ground Lease

Although each local CLT may modify the standard CLT ground lease to meet its needs and to best serve the community and the CLT homebuyers, the basic components of the CLT ground lease remain the same. An outline of a standard community land trust ground lease is available at www.clronline.org/clt.

Generally, the ground lease will not be recorded. Instead, a Memorandum of Lease is usually recorded. A copy of such a Memorandum is available at www.clronline.org/clt.

The Ground Lease has been reviewed by Fannie Mae and it has agreed to accept mortgages of the leasehold interest and the fee interest in the Improvements. Usually there will be a Rider attached to the Mortgage to tailor it to the specific needs of the Ground Lease transaction.

2. The “Resale Formula”

The basic element of a Community Land Trust's mechanism for preserving the affordability of a CLT home is the Resale Formula in conjunction with an Option to Purchase in favor of the CLT. Typically, the Resale Formula limits the CLT homeowner to some percent of the gain in value of the CLT home. When the CLT homeowner wants to sell their home, they are limited by the Resale Formula in their ground lease which determines the Option Price. The Resale Formula typically provides that the Purchase Option Price is equal to:

- (a) What the CLT homeowner paid for the CLT home when s/he first bought it; plus
- (b) Some portion (often between 20 – 35%) of the appreciation in value of the CLT home, as determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home to the current appraised value of the CLT home at the time the CLT homeowner seeks to resell.

C. Making Homeownership Affordable

CLTs have no magic method of creating the initial affordability in housing. The greatest advantage of a CLT is its ability to preserve affordability for future generations. Nonetheless, a CLT can use a variety of tools to make housing affordable. CLTs have arranged financing for people who cannot qualify for home mortgages from conventional sources. Other CLTs have worked to minimize the hurdle of large down payments for first-time homebuyers by creating a down payment loan pool. CLT homeowners generally must be able to handle monthly mortgage payments and other costs (including the ground lease fee for use of the land).

D. Transferring Ownership Between CLT Homeowners

After giving the CLT adequate notice, a CLT homeowner can sell the CLT home to an eligible buyer (i.e., someone who meets the income qualifications), transfer the lease, and move away. Since CLTs commonly retain an option to buy the CLT home, a CLT homeowner who wishes to leave may sell his/her house to the CLT. The CLT will, in turn, sell the CLT home and lease the land to a new CLT homeowner.

II. SPECIAL CONCERNS OF TITLE COMPANIES

A. Title

Generally, CLT transactions are insurable like other residential transactions. The primary difference is related to the nature of the Ground Lease. Therefore, an endorsement will be added to the both the owners and the loan policy to reflect the nature of the interest insured as being a leasehold owners interest or a mortgage secured by the leasehold interest in the land and the full ownership of the improvements. The ALTA 13 and ALTA 13.1 endorsements suit this transaction well.

The instruments used to perform the sale of the property are a Ground Lease of the land and a Deed for the improvement on the land. What will be recorded is usually a Memorandum of Ground Lease and a Warranty Deed both extending from the CLT to the CLT homeowner. The Memorandum will typically set forth the restrictions on title including a reservation of mineral rights, the right to purchase retained by the CLT, the duration of the Lease, and use and transfer restrictions.

As a consequence of the transaction, title to the land will continue to be held in the CLT, subject to the lessee-homeowner's leasehold interest in that land. Title to the improvements will vest in the homeowner. The homeowner's leasehold interest in the land and ownership interest in the improvements may both be given as security for a loan so a mortgage will often be recorded.

A CLT homeowner may sell his or her interest to another qualified purchaser. At that time, usually the original lease will be terminated and a new lease will be executed by the CLT and the new purchaser. The selling homeowner will also execute a deed for the improvements to the new purchaser.

The deed will recite the consideration paid for the improvements on the land and will be subject to transfer tax based on that consideration.

A sample owner's policy and a sample loan policy are attached to this Primer.

B. Zoning

The development of CLT housing does not differ from the development of any other type or affordable or market-rate housing. Therefore, all applicable local zoning laws and regulations will apply and traditional underwriting rules will apply.

C. Land Division Act

The nature of a CLT housing development does not exempt a development from compliance with the Land Division Act. (MCL 560.101 – 560.293)

D. Release of Affordable Housing Restrictions

In certain situations the ground lease may provide for the lifting of the affordability restrictions – generally, in deference to the entity that has financed the CLT homeowner's mortgage. Therefore, a mortgage may provide that upon foreclosure, the purchaser at a Sheriff's Sale may take free of the Option to Purchase and the Resale restrictions. However, it should also be noted that the Community Land Trust's main mission is to preserve the affordability of its CLT homes and therefore it will generally do everything in its power to prevent the CLT home from being returned to market rate. Usually the lease will provide the CLT options to cure any default of a mortgage to prevent the foreclosure and return of the property to market rate.

E. Taxation

Community land trust properties are issued two tax bills. The first, to the CLT homeowner, is for the value of the improvements (i.e., the home). The second, issued to the CLT is for the value of the property. The CLT may, via the ground lease, provide that the CLT homeowner will pay the bill for the taxes on the property.

The tax levied on the improvements should reflect the restricted market value of the improvements given the restrictions on resale price imposed by the CLT via the CLT ground lease. Once the CLT is established, it is a condition precedent to purchase of the improvements by a potential CLT homeowner that the purchaser enter into the ground lease. This is not optional to the CLT homeowner. Having purchased the improvements (at a discount to the price that would otherwise apply to a residence that included the land), the CLT homeowner is required by the ground lease, if he or she intends to resell the improvements, to first offer them for resale to the CLT at a formula price. The formula

permits the CLT homeowner to recover his or her investment in the improvements plus a predetermined but limited percentage of their appreciation in value.

This contractual obligation has the effect of fixing the market value of the improvements at the formula price – the owner cannot sell it for more, and a potential purchaser has no incentive, nor need, to pay more. Generally then, it is anticipated that the assessable value of the improvements, even if “uncapped” as a result of a sale, cannot exceed the formula price.

The land too should reflect a reduction in value by virtue of its encumbrance of the lease. In particular, the underlying land owned by the CLT is burdened with a lease that typically will have a term of 89 years. The rental is set not at market rates but at a minimal rate consistent with reducing housing costs for the benefit of low-income or moderate-income homeowners. A purchaser of the land would not pay market price for property that is subject to a permanent commitment of this type. The assessment of the land should accordingly reflect the reduction in value resulting from the existence of the long-term lease.

F. Homestead Issues

The CLT homeowner is required by the ground lease to reside in the CLT home. As a result, the homeowner is entitled to claim the improvements as his or her personal residence for purposes of the homestead exemption

G. Financing

CLT homeowners, although purchasing the CLT home at a reduced/affordable price, will almost always need to seek a loan from a commercial lender in order to buy the CLT home. CLTs make an effort to work with and educate local lenders regarding the nature of CLTs so financing will be available to potential CLT homebuyers.

CLT-related mortgages are increasingly accepted in secondary markets. State housing agencies are often willing to purchase them, and FNMA offers a CLT program. The increasing acceptability of CLTs is demonstrated by the fact that FHA insurance is available for CLT purchase mortgages, and financing has also become available under the Rural Services 502 program. Of course, financial institutions may, instead of selling a CLT mortgage, hold it itself.

When first approached, lenders may be concerned that a CLT will inhibit their ability to foreclose in the event of a default and make it difficult to remarket the property in a timely manner. As stated above, CLTs have been able to negotiate mortgage agreements that address the legitimate concerns of lenders and also protect the CLT’s long-term interest in the property by allowing the CLT to step in and cure a default, when necessary, to prevent the property from being sold on the open market (without price restrictions to retain the home’s affordability).

H. Dissolution of the CLT

If a CLT is dissolved and ownership of the land is transferred, the new owner is obligated to honor the long-term lease agreements between the CLT and its leaseholders. Typically, if the CLT ever offers the land for sale to a non-charitable buyer, the CLT homeowner will have the right of first refusal to buy the land.

POLICY NUMBER:

FILE NUMBER:

DATE OF POLICY:

AMOUNT OF INSURANCE:

SCHEDULE A

1. NAME OF INSURED:

Eligible Purchaser

2. The estate or interest in the land which is covered by this policy is:

Leasehold estate, as leasehold estate is defined in Section 1 c. of the ALTA Leasehold endorsement to this Policy, created by the instrument referred to as the Lease and further identified as:

Lessee's interest in an unrecorded Ground Lease, dated _____, 20__, wherein CLT entity is Lessor, evidenced of record by the Memorandum of Ground Lease, dated _____, 20__ and recorded _____, 20__ in Liber _____, Page _____, _____ County Records together with the fee interest in all improvements now on, or to be built on, the Land.

3. Title to the estate or interest in the land is vested in:

Eligible Purchaser

4. The land referred to in this policy is situated in the State of Michigan, County of _____, and is described as follows:

Legal description

SCHEDULE B

FILE NO. _____

POLICY NO: _____

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Mortgage executed by Eligible Purchaser, to Lender, dated _____, 20__ and recorded _____, in Liber _____, Page _____, _____ County Records.
2. Interest of CLT Entity, titleholder of record and lessor in the unrecorded Ground Lease and the terms and conditions stated therein, dated _____ wherein Eligible Purchaser, is Lessee, which Ground Lease is evidenced of record by the Memorandum of Ground Lease dated _____, 20__ and recorded _____, in Liber _____, Page _____, _____ County Records. The Ground Lease covers the land, but not the improvements now on the Land or hereafter constructed on the Land.
3. General and special taxes for the year 20____, now a lien not yet payable.
4. ***Other exceptions specific to the insured parcel.***

American Land Title Association

Endorsement 13 (Leasehold-Owners)
Adopted 10-13-01
Section IV-20

ENDORSEMENT

Attached to Policy No.

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:
 - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.
 - b. "Lease": the lease agreement described in Schedule A.
 - c. "Leasehold Estate": the right of possession for the Lease Term.
 - d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.
 - f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.
 - g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.
2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.
3. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.
4. Additional items of loss covered by this endorsement:

If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.

 - a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
 - b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.
 - c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction

f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:

POLICY NUMBER:

FILE NUMBER:

DATE OF POLICY:

AMOUNT OF INSURANCE:

SCHEDULE A

1. NAME OF INSURED:

Lender

2. The estate or interest in the land which is encumbered by the insured deed of trust:

Leasehold estate as defined in Section 1 c. of the ALTA Leasehold Loan Endorsement to this Policy, created by the instrument herein referred to as the Lease which interest is identified as follows: Lessee's interest in an unrecorded Ground Lease, dated _____, 20__, wherein CLT Entity is Lessor, evidenced of record by the Memorandum of Ground Lease, dated _____, 20__ and recorded in Liber _____, Page _____, _____ County Records together with the fee interest in all improvements now on, or to be built on, the Land.

3. Title to the estate or interest in the land is vested in:

Eligible Purchaser

4. The insured mortgage and the assignments thereof, if any, are described as follows:

Mortgage in the amount of _____ executed by Eligible Purchaser, to Lender, dated _____, 20__ and recorded _____, 20__, in Liber _____, Page _____, _____ County Records.

5. The land referred to in this policy is situated in the State of Michigan, County of _____, and is described as follows:

Legal Description

SCHEDULE B I

FILE NO.

POLICY NO:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Interest of Eligible Purchaser, titleholder of record and lessor in the unrecorded Ground Lease and the terms and conditions therein, dated _____, 20__ wherein Eligible Purchaser is Lessee, which Ground Lease is evidenced of record by the Memorandum of Ground Lease dated _____, 20__, and recorded _____, 20__ , in Liber _____, Page _____, _____ County Records. The Ground Lease covers the land, but not the improvements now on the Land or hereafter constructed on the land.
2. General and special taxes for the fiscal year 20__, now a lien not yet payable.
3. **Other exceptions specific to the insured parcel.**

SCHEDULE B, PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured mortgage upon said estate or interest:

1. **Other exceptions specific to the insured parcel.**

ALTA Form 13.1 Leasehold Loan

ENDORSEMENT

Attached to Policy No. _____

Issued By

Blank Title Insurance Company

1. As used in this endorsement, the following terms shall mean:
 - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.
 - b. "Lease": the lease agreement described in Schedule A.
 - c. "Leasehold Estate": the right of possession for the Lease Term.
 - d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.
 - f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.
 - g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy, the insured claimant.
 - h. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.
2. Valuation of Estate or Interest Insured
If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.
3. Additional items of loss covered by this endorsement:
If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.
 - a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
 - b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.
 - c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.
 - d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the

Leasehold Estate or the Tenant Leasehold

- e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction
- f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

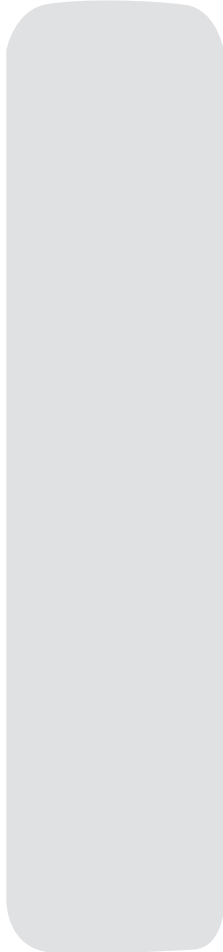
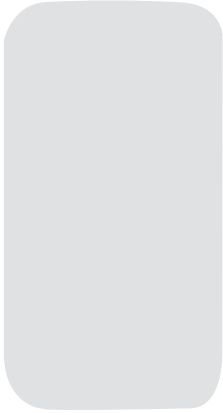
Date of Endorsement: _____

[Witness clause optional]

Date: _____

Blank Title Insurance Company

By: _____ Authorized Signatory



This document is a product of the Community Legal Resources Community Land Trust Project. Please check the CLR CLT Project website for updates to this document: www.clronline.org/clt.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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