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Off the Market: Community Land Trusts in Philadelphia

As Philadelphia struggles to balance growth and justice, conventional homeownership has steadily receded as an accessible option for more and more Philly families, which will have a lasting impact on who holds a stake in the city next act.

By **Justin Hollinger** | April 17, 2020 at 11:30 AM

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Justin Hollinger of Regional Housing Legal Services.

The last decade brought big changes to the Philadelphia real estate market. In the most hotly developing neighborhoods, land and home prices soared to levels that seemed unthinkable a few years earlier. The city's 2018 Housing Action Plan revealed that this period brought a dramatic spike in the total number of housing units, but

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with growth concentrated at the high end of the market. The same period has seen the loss of thousands of affordable units, a poverty rate that has barely budged, and a steadily declining homeownership rate with a substantial and static racial divide. All of this takes place against a backdrop of deep racial inequality that continues to affect access to land, credit and capital. As Philadelphia struggles to balance growth and justice, conventional homeownership has steadily receded as an accessible option for more and more Philly families, which will have a lasting impact on who holds a stake in the city's next act.

We're now more than month into an unprecedented period of market disruption brought on by the COVID-19 outbreak, and there's plenty of reason for concern that the aftermath might further exacerbate inequality in housing and development. Housing advocates warn that without further intervention, the expiration of eviction and foreclosure moratoria might lead to mass displacement. Low- and moderate-income families affected by layoffs and business closures are watching savings disappear. Even as many predict a decrease in real estate sales prices, many aspiring homeowners with modest incomes will be in no position to capitalize on the moment. Both the present crisis and previous local trends highlight obstacles and risks faced by members of low-income communities who seek stability during turbulent times, and an opportunity to benefit from periods of growth. With these very dynamics in mind, a growing group of nonprofit organizations hope that community land trusts (CLTs) can help communities stay rooted.

Homeownership Matters

The benefits of homeownership mean a lot to families living near the economic margins. Owning a home outright can mean significant monthly savings. For most mortgage-paying homeowners, a portion of monthly housing costs are retained as equity. During times of economic hardship and uncertainty, like the present moment, mortgagors may benefit from more opportunities than renters to work out an agreement to avoid displacement and laws to protect their equitable interests. An owned home is a devisable asset, allowing for transfer of wealth between generations. And, of special importance to families desiring to remain in their gentrifying neighborhoods, homeownership can insulate a household from the adverse effects of a booming or bursting housing market while providing an avenue to benefit from robust local investment. Many legal advocates in Philadelphia, particularly our colleagues at Community Legal Services and Philadelphia Legal Assistance, are fighting to preserve existing Philadelphia family homes, many of which are rendered vulnerable for cost-burdened homeowners. In recent years, the city of Philadelphia has introduced a variety of programs to assist homeowners, including tax relief and down payment assistance for qualifying buyers. But there remains a need for tools that confront the exclusionary effects of a real estate market driven by speculation and investment.

What Is a Community Land Trust?

In South Philly's Point Breeze neighborhood, new construction three-bedroom homes routinely sell for more than \$400,000, often much more. Yet the Community Justice Land Trust (CJLT) is building brand-new, high-quality homes that it plans to sell to income-qualifying buyers for approximately \$150,000. Moreover, whether the

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Point Breeze market fizzles or keeps booming, CJLT plans to ensure that the homes will remain affordable for future owners, even decades from now. CJLT is utilizing the community land trust model to achieve these goals.

A CLT is a nonprofit organization that acquires land and permanently retains title. The basic strategy is to decommodify land by removing it from the speculative real estate market and stewarding it for the benefit of a place-based community. Though this article focuses on the utility of CLTs in the homeownership context, many forms of land use benefit from inclusion in a CLT, including multifamily rental housing, cooperative housing, commercial uses and agricultural uses. In a typical CLT homeownership transaction, the CLT acquires a parcel of land, ideally for a low or nominal price, builds or renovates a home, and then splits the estate between the land and the improvements. A CLT homebuyer takes title to the home, while the CLT retains title to the land. A long-term ground lease defines the relationship, including a formula to determine the future sale price of the home. The formula balances the ability of the buyer to accrue equity with the CLT's goal of maintaining the affordability of the unit for a future buyer. The income-qualifying buyer pays a low purchase price that reflects both the improvements-only estate conveyed and a portion of the value of any subsidies used to defray the cost of construction, financing the purchase by mortgaging the building and leasehold interest in the land.

A CLT homebuyer lacks the ability of a conventional homeowner to realize a windfall in a bullish real estate market, but is a true homeowner, developing an asset that can be generally be sold, devised or even used as collateral under permitted circumstances. CLT homeownership also brings unique benefits. CLTs can help buyers qualify for mortgages, avoid risky loan products, prevent foreclosure, access financial counseling, and get support with home repairs. During the ongoing COVID-19 crisis, many CLTs are providing support to their homeowner lessees by participating in negotiations with mortgagees. There are benefits to the general public as well, particularly through the permanent preservation of public subsidies used for the construction of the units, which would otherwise evaporate upon unrestricted resale.

CLTs are not new. The model emerged in the United States in the 1960s as a civil rights innovation, allowing black sharecroppers in the rural south to build self-sufficient community in the face of racist violence, forced residential displacement, and economic and geographic exclusion. The model later took root in urban contexts to address similar barriers to housing and land. Recent urban housing market trends are driving a renewed interest in the model. There are now several hundred CLTs across the country, including about a dozen in Pennsylvania. If you haven't heard much buzz about CLTs before, you probably will.

Unique Model, Unique Legal Challenges

Because CLTs involve departures from typical real estate procedures, they give rise to unique legal challenges. An estate divided between land and improvements, together with permanent resale restrictions, can complicate tax assessments. Mortgage lenders may be reluctant to accept changes to typical notice requirements and recourse in the event of a default. Standard real estate documents must be modified to reflect the unique nature of the transaction. Perhaps most importantly, bylaws and other organizational documents must be thoughtfully drafted to account

for many possible future scenarios. Traditional CLTs involve governance structures that reserve board seats for lessees of CLT land and members of the local community. Others receive community oversight through other mechanisms or operate as board-controlled entities. The long-term success of any CLT is likely to hinge on the capacity and structure of the CLT organization. That's why the first decisions a CLT makes are the most important. Consultations with legal counsel and expert technical assistance are essential to ensure that a CLT is positioned for a sustainable future.

Today, the cooperative nature of the CLT model is reflected in the way Pennsylvania's existing CLTs are working together to share best practices and build upon successes. The Pennsylvania Community Land Trust Collaborative (PCLTC), convened the Community Justice Land Trust, is facilitating this cooperation among CLTs statewide. Here at Regional Housing Legal Services (RHLS), we are proud to represent the CJLT and a number of other Pennsylvania CLTs in transactional and organizational matters, and we are responding to a notable uptick in CLT-related service requests. RHLS is preparing to serve as a hub for legal resources as Pennsylvania CLTs proliferate, collaborate, and grow.

Our neighborhoods are changing fast. As COVID-19 rocks the market, underlying imbalances in access and equity remain, and are likely to worsen. The responses must be as varied as the causes. CLTs, though not a universal solution, are an exciting part of the bigger picture. The model challenges conventional assumptions about land as a commodity, embraces the concept of permanent affordability, centralizes community voices, and promises longer lasting returns on public investments.

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