

## ARTICLES

### The Need for Affirmative Legislation Supporting Community Land Trusts in Washington, D.C.

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#### ABSTRACT

*Housing has become increasingly unaffordable, especially in cities like Washington, D.C. Wage growth has not kept up, meaning that more households must spend a larger portion of their income to keep a roof over their heads. Government programs addressing affordable housing are innumerable, yet many individuals still face housing costs that are too high. At the same time, cities are plagued by thousands of vacant properties. Moving vacant properties back onto the residential market could help increase the housing stock and alleviate pressure on housing costs. However, to truly address the affordable housing crisis, vacant properties put back to productive use should be affordable in perpetuity. One type of entity, a community land trust (CLT), can facilitate that very thing.*

*This paper explores the housing affordability crisis and the vacant property landscape in D.C. It then describes the CLT model, focusing particularly on a relatively new community land trust in D.C., the Douglass Community Land Trust. Finally, this paper urges the D.C. Council to pass legislation supporting CLTs in D.C. and includes recommended policy provisions.*

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## I. INTRODUCTION

“We keep talking about a housing crisis—is it a crisis if it’s been in this state for the last hundred years? I don’t think it’s a crisis. I think this is housing under capitalism. It’s insecure, it’s unstable, it’s every person for themselves.”

Keeanga-Yamahtta Taylor, Leon Forrest Professor of African American Studies at Northwestern University<sup>1</sup>

“Housing has lost its social function and is seen instead as a vehicle for wealth and asset growth. It has become a financial commodity, robbed of its connection to community, dignity and the idea of home.”

Leilani Farha, former UN Special Rapporteur on adequate housing<sup>2</sup>

There’s a property in Washington, D.C. that has been mostly vacant for over a decade. In that time, the owner has applied for at least fifteen building permits, though nothing appears to have changed.<sup>3</sup> The owner owes over \$143,000 in property taxes.<sup>4</sup> The boarded-up home sits on a large corner lot, at the intersection of C Street and 10th Street, Northeast—in the heart of Capitol Hill.<sup>5</sup> The notorious property has its own Twitter account—@1000CstNE—run, purportedly, by the house itself.<sup>6</sup> The account chronicles the saga of permit applications and approvals, a stop work order, and the flip-flopping of the house’s designation from

1. Nawal Arjini, *Keeanga-Yamahtta Taylor Says There is No Housing Crisis: ‘It’s Just Housing Under Capitalism,’* THE NATION (Sept. 24, 2019) <https://www.thenation.com/article/archive/keeanga-yamahtta-taylor-race-profit/>.

2. Press Release, Office of the High Commissioner on Human Rights, Housing can’t be reduced to a financial asset for the wealthy, says UN expert (Mar. 1, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21253&LangID=E>.

3. 1000 C Street NE Public Permit Records, SCOUT (DEPT. OF BLDGS. & DEPT. OF LICENSING AND CONSUMER PROT.) (Aug. 17, 2022), <https://scout.dcr.dca.gov/> (search for “1000 C Street NE”) (last visited Oct. 28, 2022).

4. 1000 C Street NE Tax Records, MYTAXDC (OFF. OF TAX & REVENUE) (Aug. 17, 2022), [https://mytax.dc.gov/\\_/#1](https://mytax.dc.gov/_/#1) (search for “1000 C Street NE”).

5. See Press Release, Off. Att’y Gen. for D.C., AG Racine Announces First Enforcement Action to Crack Down on Tax Evasion by Owners of Vacant & Blighted Houses (May 10, 2022), <https://oag.dc.gov/release/ag-racine-announces-first-enforcement-action-crack>.

6. @1000CstNE, TWITTER, <https://twitter.com/1000CstNEDC> (last visited Oct. 28, 2022).

vacant to occupied—even though no one lives there.<sup>7</sup> Nothing yet has prompted the owner to rehabilitate the property and move it back onto the housing market. A few blocks away, one-bedroom apartments rent for \$1,800 to \$5,200 a month.<sup>8</sup> How has such a large parcel of land gone unutilized for so long, particularly in a city facing an affordable housing shortage? And, are we okay with it?

Perhaps not. In 2022, the Attorney General for the District of Columbia, Karl Racine, filed what is being touted as the first tax enforcement action by a D.C. Attorney General against the owner of that very house for evading the higher property taxes imposed on vacant properties under D.C. law.<sup>9</sup> The press release announcing the suit cited the nearly 3,000 vacant homes in D.C. and a dearth of affordable housing as impetuses for bringing the suit.<sup>10</sup>

Racine has a point. Over the past several decades, Americans have seen their wages stagnate and housing costs skyrocket. From 2001 to 2019, median renter household income rose just over 3% while rents climbed 15%.<sup>11</sup> And while the COVID-19 pandemic saw a small decrease in rent prices, it was short-lived, with average rents rising 12% from 2021 to 2022.<sup>12</sup> The combination of static wages and surging housing costs leaves many households cost-burdened, which means they pay more than 30% of their income on housing.<sup>13</sup> In 2020, 30% of all households were cost-burdened.<sup>14</sup> Of renters, almost half were cost-burdened, and almost a quarter of renters spent more than 50% of their income on housing.<sup>15</sup>

Speculation in the housing market contributes to increasing housing costs.<sup>16</sup> In the first quarter of 2022, investors purchased 28% of single-family homes sold, up from an average of 16% from 2017–2019.<sup>17</sup> Some researchers tag the profit-

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7. *Id.*; 1000 C Street NE, Vacant Building Map, DEPT. OF CONSUMER AND REGUL. AFFS. (Aug. 18, 2022), <https://eservices.dcaa.dc.gov/DCRAAgencyDashboard/index> (Follow “Vacant Buildings Map” hyperlink; then search for “1000 C St., NE”).

8. 1000 C Street NE Zillow Search, ZILLOW (Aug. 18, 2022), <http://zillow.com> (search “1000 C Street NE”; filter to one-bedroom apartments).

9. Off. Att’y Gen. for D.C., *supra* note 5.

10. *Id.*

11. Erik Gartland, *2019 Income-Rent Gap Underscores Need for Rental Assistance, Census Data Show*, CTR. ON BUDGET AND POL’Y PRIORITIES (Sept. 18, 2020), <https://www.cbpp.org/blog/2019-income-rent-gap-underscores-need-for-rental-assistance-census-data-show#:~:text=After%20adjusting%20for%20inflation%2C%20median,while%20rents%20rose%2015%20percent>.

12. JOINT CTR. FOR HOUS. STUD. HARV. UNIV, THE STATE OF THE NATION’S HOUS. 1 (2022), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_State\\_Nations\\_Housing\\_2022.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf).

13. *Id.* at 6.

14. *Id.*

15. *Id.*

16. Ana Maria Peredo & Murdith McLean, *Decommodification in Action: Common Property as Countermovement*, 27 ORGANIZATION 817, 824 (2020) (“Speculation on ‘social increment’ [i.e. “the increase in value that does not arise from any improvements in the land but in the growth and development of the surrounding society”] is a factor in driving up exchange values of land . . . and helps generate the housing crises that especially beset modern cities.”); see also Donald C. Bryant & Henry W. McGee, *Gentrification and the Law: Combatting Urban Displacement*, 25 J. URB. & CONTEMP. L. 43, 65 (1983).

17. JOINT CTR FOR HOUS. STUD. HARV. UNIV, *supra* note 12, at 12.

oriented nature of the housing market as the root of housing unaffordability.<sup>18</sup> There have been calls for the “decommodification” of housing to change the underlying relationship between residential property and people, and to address the housing affordability crisis.<sup>19</sup> In 2020, in Oakland, California, a group called Moms 4 Housing occupied a vacant home; the surrounding advocacy, publicity, and public pressure induced the corporate owner of the property to sell the home to the Oakland Community Land Trust for use as permanently affordable housing.<sup>20</sup> That event spurred state and local legislators in California to propose Tenant Opportunity to Purchase Acts, similar to one already in place in D.C.<sup>21</sup>

Governments at all levels have explored ways to address speculation on land and blunt the related increase in housing costs.<sup>22</sup> Scholars have proposed a variety of solutions, including switching to a land value tax,<sup>23</sup> limiting investor speculation by restricting the resale of residential housing,<sup>24</sup> allowing local governments to seize long-term vacant property with code violations,<sup>25</sup> and taking abandoned properties into receivership for affordable housing redevelopment.<sup>26</sup> In addition to attempting to limit speculation in the housing market, localities have also tried

18. Katie J. Wells, *A Housing Crisis, a Failed Law, and a Property Conflict: The US Urban Speculation Tax*, 47 ANTIPODE 1043, 1046–47 (2015).

19. Margaret J. Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1855 (1987) (“When something is noncommodifiable, market trading is a disallowed form of social organization and allocation. We place that thing beyond supply and demand pricing, brokerage and arbitrage, advertising and marketing, stockpiling, speculation, and valuation in terms of the opportunity cost of production.”).

20. E. Tammy Kim, *Moms 4 Housing: Redefining the Right to a Home in Oakland*, N.Y. REV. OF BOOKS (Mar. 9, 2020), <https://www.nybooks.com/daily/2020/03/09/moms-4-housings-redefining-the-right-to-a-home-in-oakland/>.

21. *Id.*; D.C. CODE § 42-3404.02 (2022).

22. Wells, *supra* note 18, at 1058 (exploring a 1978 D.C. tax of up to ninety-seven percent of the profit on residential speculation, rendered ineffective by a loophole that allowed speculators to continue with “business as usual”). For additional policies enacted by localities to combat speculation, *see* Bryant & McGee, *supra* note 16, at 83–86 (discussing transfer taxes, residency requirements, lending preferences, and rent control).

23. Yesim Sayin, *Land Value Tax: Can it Work in the District?*, D.C. POL’Y CTR. (Oct. 21, 2019), <https://www.depolicycenter.org/publications/land-value-tax/> (noting that while a land value tax could increase density, zoning restrictions prevent increasing density in parts of the city where housing supply is already short).

24. *See generally* Ngai Pindell, *Fear and Loathing: Combating Speculation in Local Communities*, 39 U. MICH. J. L. REFORM 543 (2006) (proposing to limit investor speculation in local markets by restricting resale of residential housing for three years).

25. *See generally* David Kraut, *Note: Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139 (1999) (proposing that local government should have the authority to seize vacant buildings with housing code violations or that have been vacant for a significant period of time and for a lowered just compensation calculation based on cost of bringing property up to code standards).

26. *See generally* James J. Kelly Jr., *Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. AFFORDABLE HOUS. & CMTY. DEV. L. 210 (2004); *see also* N.J. STAT. ANN. § 55:19-78 through 107 (West 2019) (empowering municipalities to seek possession of abandoned property through the courts after giving the owner the opportunity to rehabilitate the abandoned property, and defining an “abandoned property” as any property that has not been legally occupied for six months and is either (a) in need of rehabilitation, (b) uncompleted, (c) in tax arrears, or (d) determined to be a nuisance).

to increase the supply of housing to reduce pressure on housing prices. One approach is to push vacant property owners to move their property back onto the housing market. In D.C., owners of vacant properties must register them with the city, pay a fee, and pay a higher property tax rate.<sup>27</sup> There is no federal equivalent to a vacant property tax but conversation about one has entered the political mainstream. Senator Bernie Sanders has proposed an “empty homes” tax of two percent on the property value of vacant houses to bring “more units into the market and curb the use of housing as speculative investment.”<sup>28</sup>

Unfortunately, it appears government efforts have not been enough to create and sustain affordable housing for all. The policies some cities have turned to, like imposing a vacant property tax or seizing property with code violations, require local government implementation and enforcement. Implementation is often slow, and enforcement can become lax.<sup>29</sup> Several models have emerged to expand the cadre of entities creating affordable housing beyond government, to include nonprofits and community groups. One model, the community land trust (CLT), decommodifies land while providing permanently affordable housing. CLTs hold title to land in trust and lease it out to the owners of the structures that sit atop it.<sup>30</sup> Resale restrictions are established at the point of initial purchase to ensure that the housing remains perpetually affordable.

While community land trusts may not be the predominant model for increasing the stock of affordable housing in cities, they are emerging as a sustainable, fiscally responsible mechanism to create permanently affordable housing. Local governments have an important role to play in establishing legal regimes that enable community land trusts to reach their full potential. In Part II, this paper provides an overview of the state of housing in D.C. as it relates to affordability and vacant property. Next, Part III explores the community land trust model and specifically profiles the Douglass Community Land Trust. Finally, Part IV urges the D.C. Council to pass legislation signaling support for the CLT model, creating mechanisms for CLTs to acquire vacant property for use as affordable housing, and providing dedicated funding in support of its efforts.

## II. HOUSING IN D.C.

### A. Affordability

Washington, D.C. is one of the most expensive housing markets in the United States.<sup>31</sup> In September 2022, the median rent for a one-bedroom apartment was

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27. D.C. CODE §§ 42-3131.06, 3131.09 (2020); *Real Property Tax Rates*, D.C. OFF. OF TAX & REVENUE, <https://otr.cfo.dc.gov/node/389122>.

28. *Housing for All*, BERNIE 2020, <https://berniesanders.com/issues/housing-all/>.

29. See *infra* Part II.B.

30. James J. Kelly Jr., *Land Trusts That Conserve Communities*, 59 DEPAUL L. REV. 69, 79–82 (2009).

31. D.C. was ranked as the seventh most expensive rental market. *Zumper National Rent Report*, ZUMPER (July 26, 2022), <https://www.zumper.com/blog/rental-price-data/>.

\$2,360, and the median rent for a two-bedroom apartment was \$3,200.<sup>32</sup> That represented an increase of 7% and 8.5%, respectively, as compared to the year before.<sup>33</sup> As rent increases faster than wages, renters must put a larger share of their income toward housing. In 2019, 58% of households in D.C. were renters; of those households, 42.7% paid more than 30% of their income on rent each month.<sup>34</sup> As rents rise, fewer units are financially accessible to lower income families. From 2011 to 2019, there was a nearly 12% decrease in the number of units considered low-rent, meaning they rented for under \$600 per month.<sup>35</sup> In D.C., there's a shortage of approximately 27,000 affordable rental units for households living in poverty.<sup>36</sup>

In addition to high rents, homeownership is also cost prohibitive. In May 2022, the median sales price for a home in the D.C. metro region was \$605,000, a record high.<sup>37</sup> While the median dipped slightly in August 2022 to \$555,000, it was still 3.3% higher than the median sales price a year prior.<sup>38</sup> In 2019, Muriel Bowser, the Mayor of D.C., pledged to create 36,000 new units of housing by 2025, with 12,000 of the new units to be affordable to residents earning less than 80% of the area median income.<sup>39</sup> Through September 2022, nearly 25,000 new units of housing had been produced; however, only about 6,200 of them qualified as affordable.<sup>40</sup>

Increasing housing costs are causing some residents to leave D.C. altogether. A study by D.C.'s Office of Revenue Analysis showed that 36% of those who moved out of D.C. identified wanting better housing, cheaper housing, or to own a home as the reason for their departure.<sup>41</sup> The impact of displacement on residents is real and personal.

Participants in both focus groups are acutely aware of the dynamics of development in DC and vividly described how the city's history of residential displacement and neglect has disproportionately and negatively

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32. *Id.*

33. *Id.*

34. *DP04 Selected Housing Characteristics*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=rent%20in%20District%20of%20Columbia,%20District%20of%20Columbia&tid=ACSDP1Y2019.DP04> (choose "2019: ACS 1-Year Estimates Data Profiles" from dropdown).

35. *Every State Has Lost Low-Rent Units Since 2011*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., <https://www.jchs.harvard.edu/loss-low-rent-units>.

36. *Housing Needs by State / District of Columbia*, NAT'L LOW INCOME HOUS. COAL., <https://nlihc.org/housing-needs-by-state/district-columbia>.

37. *As DC-Area Home Prices Break Record in May, The Market Shifts*, URB. TURF, (June 15, 2022), <https://dc.urbanturf.com/articles/blog/as-dc-area-home-prices-break-record-in-may-market-continues-to-cool/19762>.

38. *Id.*

39. *DMPED 36,000 by 2025 Dashboard*, DEPUTY MAYOR FOR PLAN. & ECON. DEV., <http://open.dc.gov/36000by2025/> (last visited Oct. 28, 2022).

40. *Id.*

41. Yesim Sayin Taylor, *Residents move into the city for jobs, move out for housing*, DIST., MEASURED (June 8, 2015), <https://districtmeasured.com/2015/06/08/residents-move-into-the-city-for-jobs-move-out-for-housing-2/>.

impacted the city's African American residents across decades. For most participants in the renter focus group, these sentiments and subsequent fears stem from personal experiences of being displaced or from observing the radical transformation of neighborhoods like Columbia Heights, the H Street corridor, and U Street. Regardless of their direct experience with displacement, participants in both groups consider DC's development history a racialized and class-based process that yields "winners and losers"—winners being people with "superior or elite status" who "dominate or take over an area for their own benefit" and losers being the most "vulnerable people."<sup>42</sup>

### B. Vacant Properties

Vacant properties provide an opportunity to increase housing stock. If the housing created by getting vacant residential properties back on the housing market can be permanently affordable, it could help lessen the affordable housing crisis. In D.C., owners of vacant properties must register them with the city and pay a \$250 fee.<sup>43</sup> Property taxes on vacant properties are assessed at a higher rate: \$5 per every \$100 of assessed value, compared to \$0.85 for occupied residential real property.<sup>44</sup> Higher taxes on vacant properties should incentivize owners to sell or rehabilitate their properties in order to get them back on the market. However, D.C. still has a sizeable number of vacant properties. The most recent data from the U.S. Census Bureau's American Community Survey showed that, in 2019, 7% of rental housing units sat vacant as did just under 2% of owner-occupied units.<sup>45</sup> That represented over 31,000 housing units left empty.<sup>46</sup>

Not only do vacant properties deprive residents of housing, but they also negatively impact neighborhoods. Vacant properties are associated with reductions in the value of nearby properties, negative impacts on neighbors' quality of life, increases in crime, and decreases in property tax revenue.<sup>47</sup> Studies have shown that when there is a vacant building on a block, the value of nearby properties drops by 20% or more.<sup>48</sup> Residents in neighborhoods plagued by vacant and

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42. MARY BOGLE ET AL., URB. INST., *EQUITABLE DEVELOPMENT AND URBAN PARK SPACE* 12 (2019), [https://www.urban.org/sites/default/files/publication/99850/equitable\\_development\\_and\\_urban\\_park\\_space\\_1.pdf](https://www.urban.org/sites/default/files/publication/99850/equitable_development_and_urban_park_space_1.pdf).

43. D.C. CODE §§ 42-3131.06, 3131.09 (2022).

44. *Real Property Tax Rates*, *supra* note 27.

45. *DP04 Selected Housing Characteristics*, *supra* note 34.

46. *Id.*

47. ALAN MALLACH, LINCOLN INST. OF LAND POL'Y, *THE EMPTY HOUSE NEXT DOOR* 19–20 (2018).

48. *Id.* at 19.

abandoned buildings have higher rates of mental distress and chronic illness and children experience stunted brain and physical development.<sup>49</sup>

Historically, the D.C. government has failed to adequately enforce vacant property laws.<sup>50</sup> A more recent audit of D.C.’s Department of Consumer and Regulatory Affairs (DCRA)—the department historically responsible for enforcing the vacant property law—found that

DCRA’s mismanagement of the vacant and blighted program—including improper granting of exemptions, not following legal requirements, errors with communication, . . . and weaknesses in processes related to occupied status—resulted in almost \$1 million in lost potential revenue from our sample of only 31 properties. With anywhere from 1,000–3,000 more vacant and blighted properties in D.C., the true financial impact could be far more significant.<sup>51</sup>

In October 2022, DCRA split into two new agencies: the Department of Buildings and the Department of Licensing and Consumer Protection.<sup>52</sup> The Department of Buildings contains the Office of Residential Inspections, tasked with registering and inspecting vacant properties.<sup>53</sup> While the inclusion of an office dedicated to identifying and inspecting vacant properties in D.C. is promising, prior to the split, DCRA had a unit dedicated to investigating and classifying vacant buildings and its performance was lackluster.<sup>54</sup>

In a city like D.C., where height restrictions already place a limit on density,<sup>55</sup> putting vacant properties in high-demand neighborhoods back onto the housing market must play a role in addressing housing affordability. Partners like

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49. ERWIN DE LEON & JOSEPH SCHILLING, URB. INST., URBAN BLIGHT AND PUBLIC HEALTH 11 (2017), [https://www.urban.org/sites/default/files/publication/89491/2017.04.03\\_urban\\_blight\\_and\\_public\\_health\\_vprn\\_report\\_finalized.pdf](https://www.urban.org/sites/default/files/publication/89491/2017.04.03_urban_blight_and_public_health_vprn_report_finalized.pdf).

50. VICTOR L. LOWE, U. S. GOV’T ACCOUNTABILITY OFF., GDD-78–35, THE DISTRICT OF COLUMBIA NEEDS A PROGRAM TO IDENTIFY VACANT HOUSES AND GET THEM BACK ON THE MARKET (1978) (“The District has been talking about vacant housing for a long time, but has done very little, until recently, to get such housing back on the market. The principal reasons are that the District had neither complete and accurate data on the number, location, and physical condition of vacant houses, or a system to develop such information nor a specific program to return vacant houses to use. Existing remedies to return vacant houses to use are limited.”).

51. INGRID DRAKE & JULIE LEBOWITZ, OFF. OF THE D.C. AUDITOR, SIGNIFICANT IMPROVEMENTS NEEDED IN DCRA MANAGEMENT OF VACANT AND BLIGHTED PROPERTY PROGRAM i (2017), <https://dcauditor.wpenginepowered.com/wp-content/uploads/2018/07/Vacant.Blighted.Report.9.21.17.pdf>.

52. Martin Austerhuhle, *After a Rocky Relationship with the Public, One D.C. Government Agency is Breaking Up*, DCIST (Aug. 3, 2022), <https://dcist.com/story/22/08/03/dcra-dc-government-agency/>.

53. *See About DOB*, D.C. DEPT. OF BUILDINGS, <https://dob.dc.gov/page/about-dob> (last visited Oct. 28, 2022).

54. *DCRA Divisions*, D.C. DEP’T OF CONSUMER & REGUL. AFF., <https://dcra.dc.gov/page/dcra-divisions> (identifying Vacant Building Enforcement Unit) (last visited Oct. 28, 2022); *see* DRAKE & LEBOWITZ, *supra* note 51 at 3, 12–17.

55. D.C. CODE § 6-601.05 (2022).



community land trusts provide a mechanism to put vacant properties back to use, adding affordable housing to the market and reducing the number of vacant properties the D.C. government must monitor, freeing up enforcement resources.

### III. COMMUNITY LAND TRUSTS

Community land trusts emerged in the late 1960s as a way for Black farmers in the American South to retain their land in the face of predatory and discriminatory lending practices.<sup>56</sup> They grew in popularity in the 1980s in response to the growing housing affordability crisis.<sup>57</sup> Today, there are an estimated 270 CLTs operating across the country,<sup>58</sup> providing thousands of permanently affordable homes.<sup>59</sup> The primary purpose of a CLT is to take land out of the traditional real property market to ensure housing remains affordable in perpetuity.<sup>60</sup> CLTs are similar to other mechanisms aimed at preserving affordable housing, like limited-equity cooperatives, mutual housing associations, and nonprofit groups that provide affordable rental units, in that they shield the land from the influence of the housing market and the associated increase in value.<sup>61</sup>

#### A. *The Mechanics of CLTs*

Generally, community land trusts are nonprofit, tax-exempt organizations that acquire title to land through purchase or donation, and that retain title in perpetuity to remove the land from the free market.<sup>62</sup> CLTs then enter into long-term lease agreements with lessees, who lease the land and purchase the physical housing structure on the property.<sup>63</sup> The housing units could be single-family homes or units in a multi-unit building. Therefore, CLTs separate the land from the home, and CLT homebuyers are both owners of the physical structure and

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56. TRACEY HADDEN LOH & HANNA LOVE, BROOKINGS INST., *THE EMERGING SOLIDARITY ECONOMY: A PRIMER ON COMMUNITY OWNERSHIP OF REAL ESTATE* (2021); KIM GRAZIANI, CTR. FOR CMTY. PROGRESS, *LAND BANKS AND COMMUNITY LAND TRUSTS: PARTNERING TO PROVIDE EQUITABLE HOUSING OPPORTUNITIES NOW AND FOR FUTURE GENERATIONS 6* (2021) (suggesting that Black farmers began a community land trust model in the civil rights era to preserve the longevity of their land); see 42 U.S.C. § 12773(f) (providing federal definition of community land trust).

57. Peredo & McLean, *supra* note 16, at 825.

58. GRAZIANI, *supra* note 56, at 6.

59. Wang et al., *Tracking Growth and Evaluating Performance of Shared Equity Homeownership Programs During Housing Market Fluctuation 3* (Lincoln Inst. of Land Policy, Working Paper No. WP19RW1, 2019).

60. Peredo & McLean, *supra* note 16, at 825 (“At the heart of the CLT model is its essential decommodification of the land on which housing is built. The CLT itself is a non-profit organizational form that ‘acquires land through purchase or donation to retain title in perpetuity, thus removing the land from the speculative market.’”).

61. James J. Kelly, Jr., *Sustaining Neighborhoods of Choice: From Land Bank(ing) to Land Trust (ing)*, 54 WASHBURN L.J. 613, 620 (2015).

62. Peredo & McLean, *supra* note 16, at 825; see also NATIONAL COMMUNITY LAND TRUST NETWORK, *COMMUNITY LAND TRUST TECHNICAL MANUAL* (Kirby White, ed., 2018), [https://groundedsolutions.org/sites/default/files/2018-10/Community%20Land%20Trust%20Technical%20Manual\\_0.pdf](https://groundedsolutions.org/sites/default/files/2018-10/Community%20Land%20Trust%20Technical%20Manual_0.pdf) (comprehensive guide to CLTs, including model bylaws, ground leases and an explanation of the legal foundation for CLT’s preemptive right to purchase).

63. Peredo & McLean, *supra* note 16, at 825.

lessees of the land. If a CLT homeowner decides to sell, the CLT retains an option to purchase the home at a price set out in the ground lease.<sup>64</sup> Ground leases also usually require owner-occupancy.<sup>65</sup>

Community land trusts generally focus on a delineated geographic area and CLT membership is usually open to anyone, including community leaders, business owners, or other interested residents, who lives within the area's bounds.<sup>66</sup> Residents of CLT properties, which could include homeowner-lessees, co-op members, and tenants depending on the types of properties in the CLT's portfolio, are also members of the CLT and have voting rights.<sup>67</sup> CLTs are usually governed by a board, with two-thirds of the board elected by CLT membership. The board usually includes lessees of CLT land, non-lessees who live in the surrounding community, and public officials or nonprofit leaders who represent the public interest.<sup>68</sup> Members' rights vary from CLT to CLT, but some members have the right to vote on bylaw changes, review the annual report, serve on the board, and provide input on CLT priorities.<sup>69</sup>

Community land trusts need funding to cover operating costs and to acquire land for inclusion in the trust. CLTs are funded by government, private philanthropy, and/or other nonprofits.<sup>70</sup> CLTs acquire land in various ways, including by donation or purchase, either on the free market, by direct sale from local government, or by working with tenants exercising their right to purchase under local law. CLTs may also be given land from an area land bank, which is a governmental entity or a nonprofit corporation that acquires property from cities and either transfers it for development or holds and maintains it to stabilize the area.<sup>71</sup>

### B. *The Benefits of CLTs*

Community land trusts offer homes at lower prices compared to the open market because CLTs effectively take the cost of the land out of the calculation. This makes homes affordable to buyers for whom homeownership would otherwise be beyond their financial reach.<sup>72</sup> CLTs often limit purchase to those making

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64. JOHN EMMEUS DAVIS & RICK JACOBUS, LINCOLN INST. FOR LAND POLICY, *THE CITY-CLT PARTNERSHIP: MUNICIPAL SUPPORT FOR COMMUNITY LAND TRUSTS 4* (2008), <https://www.lincolninst.edu/publications/policy-focus-reports/city-clt-partnership>.

65. *Id.* at 5.

66. *Id.*

67. ERICA FOLDY & JONATHAN WALTERS, NYU/WAGNER RSCH. CTR. FOR LEADERSHIP IN ACTION, *THE POWER OF BALANCE: LESSONS FROM BURLINGTON COMMUNITY LAND TRUST* (2005), <https://community-wealth.org/content/power-balance-lessons-burlington-community-land-trust>.

68. DAVIS & JACOBUS, *supra* note 64, at 5.

69. Linda Childers, *First a Park, Then a Citywide Land Trust in D.C.*, SHELTERFORCE (July 13, 2021), <https://shelterforce.org/2021/07/13/first-a-park-then-a-citywide-land-trust-in-d-c/>.

70. See BOGLE ET AL., *supra* note 42, at 20 (grant from JPMorgan Chase PRO Neighborhood Initiative included \$3 million to establish the Douglass Community Land Trust in collaboration with City First Enterprises).

71. PAYTON HEINS & TARIK ABDELAZIM, CTR. FOR CMTY. PROGRESS, TAKE IT TO THE BANK: HOW LAND BANKS ARE STRENGTHENING AMERICA'S NEIGHBORHOODS 10 (2014).

72. Kelly, *supra* note 61, at 614.

up to 80–120% of area median income (AMI).<sup>73</sup> In exchange for the opportunity to purchase the home, homeowners promise to occupy the property while they own it and, when they sell it, they generally must sell it to another qualified household at an affordable price.<sup>74</sup> This restriction often takes the form of an agreement between the CLT and the homebuyer that includes a formula for calculating the resale price.<sup>75</sup> Without these resale restrictions, these homes would be unaffordable for subsequent low-income purchasers. One study demonstrated that resale restrictions kept 50% of shared equity housing affordable to those making below 50% of AMI, and another 48% of shared equity housing affordable for those making between 50–80% of AMI.<sup>76</sup> Without the restrictions, only 13% of the properties would be affordable to those making below 50% of AMI, and 61% would be affordable to those making between 50–80% of AMI.<sup>77</sup>

Beyond creating permanently affordable housing, community land trusts provide additional benefits. CLTs can proactively acquire property in areas where residents are facing displacement.<sup>78</sup> CLTs could also help address the racial wealth gap by increasing homeownership for households of color. A study of over 4,000 shared equity properties saw the share of minority households increase from 13% before 2001 to 43% from 2013 to 2018.<sup>79</sup> The increase in shared equity homes owned by minority owners is promising, considering that, in 2021, minority homeowners comprised 27.8% of homeowners in the United States.<sup>80</sup>

Further, owners of CLT homes still realize wealth benefits from homeownership, even though the sale of their homes is subject to restrictions. While the CLT owns the land on which their homes sit, owners can still realize wealth gains in the equity of the housing structure itself.<sup>81</sup> For example, say a homeowner purchased her CLT home for \$100,000. The lease agreement states that she retains 25% of the appreciation in value of the home. When the homeowner wants to sell her home, the value has increased by \$20,000. Therefore, she can resell her house for the combined price of what she originally paid (\$100,000) and 25% of the

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73. Michael Brown, *Frequently Asked Questions About Community Land Trusts*, BURLINGTON ASS'N CMTY. DEV. 3 (2007), [https://www.burlingtonassociates.com/files/4913/4461/2390/9-Frequently\\_Asked\\_Questions\\_About\\_CLTs.pdf](https://www.burlingtonassociates.com/files/4913/4461/2390/9-Frequently_Asked_Questions_About_CLTs.pdf).

74. Kelly, *supra* note 30, at 79–82.

75. *Id.* at 81; *see also Community Land Trusts*, LOCAL HOUSING SOLUTIONS, <https://localhousingsolutions.org/housing-policy-library/community-land-trusts/> (last visited Oct. 28, 2022) (“Common types of formulas are ‘indexed formulas’ and ‘shared appreciation formulas.’ Indexed formulas use economic indicators, such as the area median income, wages, or consumer prices, to determine the home’s sales price. These indices typically provide a more accurate reflection of families’ purchasing power than changes in home values. Shared appreciation formulas calculate a sales price by adding some percentage of the home’s value appreciation to the original sales price.”).

76. Wang et al., *supra* note 59, at 36–37.

77. *Id.*

78. Kelly, *supra* note 61, at 614.

79. Wang et al., *supra* note 59, at 28.

80. *S2502 Demographic Characteristics for Occupied Housing Units*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=homeownership&tid=ACSST1Y2021.S2502> (choose “2021: ACS 1-Year Estimates Subject Tables” from dropdown).

81. LOH & LOVE, *supra* note 56, at 11.

equity (\$5,000) for a total of \$105,000. While reselling at fair market value would likely result in larger wealth gains, CLTs target those who would otherwise be unable to enter homeownership at all. Therefore, CLTs are a viable mechanism for lower-income families to build wealth. In fact, one study showed that the combined wealth accumulation for the median CLT household was approximately \$14,000.<sup>82</sup> Another study showed that shared equity homeowners accumulated 80% of the wealth accumulated by traditional homeowners over the same period—\$10,000 compared to \$12,500.<sup>83</sup> Additionally, because mortgages on CLT homes necessarily only cover the cost of the physical structure, monthly mortgage payments are lower than they would be if the property was acquired on the open market.<sup>84</sup> A stable, affordable mortgage payment means CLT homeowners no longer face unpredictable and often rising rents. This could enable CLT homeowners to afford other necessities or establish savings.

Not only do CLTs provide an avenue to build wealth, but they also promote neighborhood stability through decreased mortgage delinquencies and foreclosures. “[CLT] lessees have outperformed the market by a wide margin in delinquencies and foreclosures during the housing crisis, despite supporting predominantly low and moderate-income households.”<sup>85</sup> The National Delinquency Survey conducted by the Mortgage Bankers Association reported that, in 2009, 30.6% of subprime loans and 7% of prime loans were seriously delinquent.<sup>86</sup> However, only 1.6% of loans on community land trust units were delinquent.<sup>87</sup> This may be due to the fact that CLTs are usually involved in the mortgage process at the beginning, preventing predatory terms, and often intervene with financial assistance before a homeowner defaults, preventing foreclosure.<sup>88</sup> CLTs also provide pre-purchase education on homeownership, post-purchase training on financial literacy, and assistance with finding contractors and making repairs.<sup>89</sup>

CLTs are also a good use of public money. Many cities already have programs providing down payment assistance or a no-interest or deferred-interest loan to help lower-income buyers purchase homes.<sup>90</sup> But, in markets where housing prices increase faster than incomes, the amount needed to subsidize mortgages for low-income buyers increases with time, requiring a larger public investment to

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82. Wang et al., *supra* note 59, at 44.

83. Arthur Acolin et al., *Transitioning to Homeownership: Asset Building for Low- and Moderate-Income Households*, 31 HOUS. POL’Y DEBATE 1032, 1044 (2021), <https://www.tandfonline.com/doi/pdf/10.1080/10511482.2021.1949372>.

84. LOH & LOVE, *supra* note 56, at 10.

85. Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63, 112 (2011).

86. EMILY THADEN & GREG ROSENBERG, LINCOLN INST. OF LAND POLICY, OUTPERFORMING THE MARKET: DELINQUENCY AND FORECLOSURE RATES IN COMMUNITY LAND TRUSTS 4 (2010).

87. *Id.*

88. John Emmeus Davis, *Common Ground: Community-Owned Land as a Platform for Equitable and Sustainable Development*, 51 U.S.F. L. REV. 1, 15–16 (2017).

89. Steil, *supra* note 85, at 113.

90. DAVIS & JACOBUS, *supra* note 64, at 7.

maintain affordability.<sup>91</sup> CLTs usually do not require such sustained, increasing public subsidy in order to maintain affordable housing.<sup>92</sup> While CLTs require an investment of public funds at the beginning to acquire land and build or rehabilitate housing, resale restrictions take the place of mortgage assistance for subsequent purchasers, limiting or eliminating the need for an upfront subsidy via down-payment assistance.<sup>93</sup>

Finally, CLTs play a role in neighborhood revitalization. For example, the Burlington Community Land Trust started by acquiring and rehabilitating residential properties, but then gradually expanded its portfolio to include properties for nonprofits and larger community development projects.<sup>94</sup> CLTs provide a mechanism for cities and communities to move property into productive use as affordable housing or commercial space for nonprofits, small business owners, or artists.

### C. Douglass Community Land Trust

In 2019, a new CLT in Washington, D.C.—the Douglass Community Land Trust (Douglass CLT)—acquired its first property.<sup>95</sup> The Douglass CLT was established as part of the redevelopment of a bridge spanning the Anacostia River called the 11th Street Bridge Park Project.<sup>96</sup> Building Bridges Across the River, a nonprofit, started the project to create economic opportunity for residents of the nearby neighborhoods, particularly Ward 8.<sup>97</sup> To ensure residents realize the benefits of the development, Building Bridges worked with Anacostia residents to develop an Equitable Development Plan (EDP), which calls for significant investments in affordable housing, workforce development, small businesses, and arts and culture while ensuring community outreach and involvement.<sup>98</sup> The community expressed a desire for local control of affordable housing initiatives created under the EDP, and the CLT quickly rose as the preferred model.<sup>99</sup>

Bridge Park created a Community Land Trust Action Plan, then partnered with City First Homes, a local nonprofit that stewards affordable housing in D.C., to establish the Douglass CLT.<sup>100</sup> City First Enterprises, an affiliate of City First Homes, and Citi Community Development made an initial investment of

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91. *Id.*

92. *Id.* at 7–8. *See also id.* at 9 tbl.1.

93. *Id.* at 8.

94. FOLDY & WALTERS, *supra* note 67.

95. Childers, *supra* note 69; *see* BOGLE ET AL., *supra* note 42, at 24–28.

96. *See* BOGLE ET AL., *supra* note 42, at 1, 24–26.

97. *See id.* at 1, 17; *see also* BUILDING BRIDGES ACROSS THE RIVER, <https://files.constantcontact.com/f26e5c12801/0684c496-228a-4614-9dfc-6590e36ed395.pdf> (last visited Oct. 28, 2022).

98. BOGLE ET AL., *supra* note 42, at 24–25; Megan Kimble, *Can Anacostia Build a Bridge Without Displacing Its People?*, N.Y. TIMES (Aug. 10, 2022), <https://www.nytimes.com/interactive/2022/08/09/headway/anacostia-bridge.html>.

99. BOGLE ET AL., *supra* note 42, at 24–25.

100. *Id.* at 25–26.

\$250,000.<sup>101</sup> That investment was matched by JPMorgan Chase, and the Ford Foundation supplied additional funds, bringing the total investment to \$550,000.<sup>102</sup> Next, Bridge Park and its partners embarked on significant community education and outreach efforts and established the Community Land Trust Advisory Committee, which was composed of Ward 8 residents, business owners, and advocates.<sup>103</sup> The Douglass CLT continues to engage residents and other stakeholders to determine how it can be most effective in providing affordable housing.<sup>104</sup>

The Douglass CLT's first property was a 65-unit apartment complex in the Congress Heights neighborhood.<sup>105</sup> The tenants of that complex themselves exercised their rights under D.C.'s Tenant Opportunity to Purchase Act (TOPA), which allows renters an opportunity to buy properties collectively from their landlord when their building is put up for sale.<sup>106</sup> The tenants assigned their TOPA rights to a limited liability corporation created by the National Housing Trust and N Street Village, a D.C. nonprofit that supports unhoused women.<sup>107</sup> The LLC bought the building for \$7 million in 2018 and received \$9.1 million from D.C.'s Housing Production Trust Fund to rehabilitate the units.<sup>108</sup> The Douglass CLT contributed \$1.3 million to the project, and it will "hold the deed to the land beneath the buildings, with the goal of keeping the rental units permanently affordable."<sup>109</sup>

Over ten years, the Douglass CLT aims to acquire 750 units of housing, either rentals or owner-occupied units, to create permanently affordable low- and moderate-income residences.<sup>110</sup> It is making steady progress toward that goal, with 223 units in its portfolio in 2022 and more to come.<sup>111</sup> The Douglass CLT has continued working with tenants who desire to exercise their TOPA rights. In

101. *Id.* at 26.

102. *Id.*

103. *Id.*

104. *See generally* Events, DOUGLASS CMTY. LAND TR., <https://douglassclt.org/#Events> (last visited Oct. 28, 2022) (advertising Douglass CLT's monthly meetings and special events); *cf. id.* at 26–29 (discussing Douglass CLT's collaborative efforts to preserve and create affordable housing).

105. Telephone Interview with Ginger Rumph, Exec. Dir., Douglass Cmty. Land Tr. (Mar. 17, 2020); *see* Childers, *supra* note 69.

106. Steve Dubb, *Community Land Trust in Nation's Capital to Purchase 65-Unit Property*, NONPROFIT Q. (Oct. 8, 2019), [https://nonprofitquarterly.org/community-land-trust-in-nations-capital-to-purchase-65-unit-property/?utm\\_content=102740618&utm\\_medium=social&utm\\_source=twitter&hss\\_channel=tw-61206610](https://nonprofitquarterly.org/community-land-trust-in-nations-capital-to-purchase-65-unit-property/?utm_content=102740618&utm_medium=social&utm_source=twitter&hss_channel=tw-61206610).

107. *Id.*; Press Release, D.C. Dep't of Hous. & Cmty. Dev., DHCD Financing to Preserve 65 Affordable Housing Units in Ward 8 (Oct. 15, 2020), <https://dhcd.dc.gov/release/dhcd-financing-preserve-65-affordable-housing-units-ward-8>; *see About*, N ST. VILL., <https://www.nstreetvillage.org/about/> (last visited Oct 28, 2022).

108. Dubb, *supra* note 106; D.C. Dep't of Hous. & Cmty. Dev., *supra* note 107.

109. Dubb, *supra* note 106.

110. Telephone Interview with Ginger Rumph, *supra* note 105; Childers, *supra* note 69.

111. Lauren Mayer, *Community Land Trust is Planting the Roots of Housing Affordability*, PUBLIC SQUARE (Apr. 4, 2022), <https://www.cnu.org/publicsquare/2022/04/04/community-land-trust-planting-roots-housing-affordability>.

2022, residents in Ward 1 contacted the Douglass CLT to explore a partnership by which they could acquire their buildings under TOPA.<sup>112</sup> And it seems that local government is warming to the idea of utilizing partnerships with the CLT to advance affordable housing goals. In April 2021, D.C. announced a pilot partnership with the Douglass CLT to redevelop two schools into 55 units of affordable housing.<sup>113</sup> A community group, SW DC Action, is actively lobbying the D.C. Mayor to purchase two lots for sale in southwest D.C. and to transfer title to the Douglass CLT for use as a community space and to ensure community-led development.<sup>114</sup>

The Douglass CLT is also looking at other property acquisition pathways, including by working with developers on projects that are already underway.<sup>115</sup> It has proposed providing a property maintenance fund to existing projects to reduce the cost for developers, enabling them to provide more affordable units.<sup>116</sup> It has also worked with homebuyers in Ward 8 with Home Purchase Assistance Program (HPAP) vouchers and who have identified properties, but that need rehabilitation assistance.<sup>117</sup> Under HPAP, homebuyers can only spend \$35,000 on any property renovations and the Douglass CLT is hoping to find an efficient way to provide assistance to buyers who want to purchase property requiring more significant improvements.<sup>118</sup> The Douglass CLT is also considering the acquisition of government-owned land.<sup>119</sup>

#### IV. AFFIRMATIVE SUPPORT FOR COMMUNITY LAND TRUSTS

##### *A. Recognition and Dedicated Funding*

While community land trusts like the Douglass CLT operate as a nonprofit entity separate from government, government still plays a very important role in ensuring their success. Currently, the D.C. Code does not contain any explicit provisions outlining funding or other support for CLTs in D.C.

In 2019, D.C. Councilmember Trayon White, along with three of his colleagues, introduced a bill that defined “affordable housing community land trust”

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112. Jacob Wallace, *D.C.’s Robust Tenant Laws Allowing Local Land Trust to Grow Quickly*, BISNOW (Mar. 15, 2022), <https://www.bisnow.com/washington-dc/news/multifamily/what-it-takes-to-run-dcs-land-trust-scale-opportunism-and-topa-112256>.

113. *Mayor Bowser Announces Community Land Trust Approach to Revitalize Langston-Slater Schools Site*, DC.GOV (April 20, 2021), <https://dc.gov/release/mayor-bowser-announces-community-land-trust-approach-revitalize-langston-slater-schools-site>.

114. Dan Silverman (Prince of Petworth), *Local Group SW Action Holds Rally Urging D.C. Government to Designate Land in SW for a Community Land Trust*, POPVILLE (June 6, 2022), <https://www.popville.com/2022/05/local-group-sw-action-urges-d-c-government-to-designate-land-for-a-community-land-trust/>.

115. Telephone Interview with Ginger Rumph, *supra* note 105.

116. *Id.*

117. *Id.*

118. *Id.* Douglass CLT would like to limit the number of times the property changes ownership, as transfer taxes increase the cost of projects that require ownership to change hands multiple times.

119. *Id.*

and proposed an “affordable housing land trust agreement” that placed conditions on the relationship between the CLT and homeowner-lessees.<sup>120</sup> The bill also created an Affordable Housing Community Land Trust Fund that would siphon funding from D.C.’s Housing Production Trust Fund or Housing Preservation Fund.<sup>121</sup> While the bill did not pass and it has not been reintroduced, White continued to advocate for CLTs during his recent campaign for mayor. In March 2022, he introduced a bill that would grant a preference to CLTs in their attempts to acquire land in D.C.<sup>122</sup>

The Council for the District of Columbia should, at a minimum, pass legislation affirmatively supporting the permanent affordability model of community land trusts. It should dedicate a funding stream for CLTs, with an associated definition of a “community land trust” and good governance reporting requirements developed in consultation with the Douglass CLT. The passage of legislation affirmatively supporting CLTs would do several things. First, it would signal to the rest of the D.C. government, including the Department of Housing and Community Development, which is responsible for approving housing development projects,<sup>123</sup> that CLT-initiated developments or projects partnering with the Douglass CLT are aligned with the policy goals of the D.C. government. Additionally, by clearly defining CLTs, the D.C. Council would solidify CLTs as an important contributor to the affordable housing ecosystem. However, an overly proscriptive definition risks cabining the work of community land trusts too narrowly, potentially limiting their flexibility and adaptability. Therefore, the D.C. Council should consult with the Douglass CLT to craft a definition to ensure that any future CLTs promote perpetually affordable housing and focus on community-led initiatives.

Further, the D.C. Council should dedicate funding to help new CLTs, like the Douglass CLT, scale up and reach their affordable housing targets. Ideally, the funding stream would be separate from other affordable housing funding sources, as CLTs provide a unique value-add to the affordable housing sector through permanent stewardship of properties, homeowner supports, and flexibility of resource allocation. In D.C.’s fiscal year 2022 budget, the Douglass CLT was given \$2 million to help it purchase commercial and residential properties<sup>124</sup> but that money was allocated from federal funding sources and was not

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120. Affordable Housing Community Land Trust Program Establishment Act of 2019, B. 23-0550, Council § 2(g)(h) (D.C. 2019).

121. *Id.* § 3(b).

122. B. 24-0680, Council (D.C. 2022); Martin Austermuhle, *D.C. Mayoral Candidates Tussle Over Crime and Housing in TV Debate*, NPR (June 2, 2022), <https://www.npr.org/local/305/2022/06/02/1102598308/d-c-mayoral-candidates-tussle-over-crime-and-housing-in-t-v-debate>.

123. *Development*, DEP’T OF HOUS. AND CMTY. DEV., <https://dhcd.dc.gov/page/development> (last visited Oct. 28, 2022).

124. GOV’T OF THE D.C., FY2022 APPROVED BUDGET AND FINANCIAL PLAN, VOLUME 1 EXECUTIVE SUMMARY 1–3 (2021), <https://app.box.com/s/5sz8y3wequcgtxqjfxsqum8bpivy5m>.



renewed.<sup>125</sup> In other cities, funding has taken the form of startup financing, multi-year operational funds, funding for specific projects, and donation of city property.<sup>126</sup>

### B. Mechanisms for Acquiring Land

The legislation should also provide community land trusts with additional mechanisms to acquire land. First, D.C. could explicitly grant the Douglass CLT the authority to use eminent domain to take vacant property. In *Kelo v. City of New London*, the Supreme Court upheld the use of eminent domain by cities to take property for economic redevelopment.<sup>127</sup> States themselves can exercise eminent domain authority, but they can also delegate it to non-governmental entities, including private parties.<sup>128</sup> D.C. has done this before: the city delegated eminent domain authority to a corporation, the National Capital Revitalization Corporation, to take a shopping center for economic redevelopment.<sup>129</sup>

While there are hurdles associated with eminent domain, including the requirement of just compensation and alleged negative market effects,<sup>130</sup> it would be an effective tool to bring vacant or otherwise nonproductive land back into use as affordable housing. Take the 1000 C Street, NE property. While the D.C. Attorney General sued the owner for filing fraudulent documents to avoid paying the vacant property tax rate, the lawsuit primarily seeks damages.<sup>131</sup> Even if the Attorney General prevails, if the owner can pay the damages from other assets, there is no guarantee that the owner would be forced to repair the house and find a tenant or sell it. Allowing a CLT to exercise eminent domain, subject to whatever limitations the D.C. Council deems appropriate, would provide a CLT the authority to identify and purchase long-vacant properties in high-demand areas for redevelopment.

Further, D.C. should provide the Douglass CLT with a right to purchase similar to, but separate and more expansive than, the Tenant Opportunity to Purchase Act (TOPA) and District Opportunity to Purchase Act (DOPA).<sup>132</sup> DOPA allows the Mayor to purchase buildings of five or more units just as a tenant would under

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125. OFF. OF THE CHIEF FIN. OFFICER, CHAPTER: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT 10 (2022), <https://cfo.dc.gov/node/1586691>.

126. DAVIS & JACOBUS, *supra* note 64, at 14.

127. 545 U.S. 469, 490 (2005).

128. 1A Nichols on Eminent Domain § 3.03 (2022).

129. National Capital Revitalization Corporation Eminent Domain Clarification and Skyland Eminent Domain Approval Amendment Act of 2004, 52 D.C. Reg. 859 (Feb. 4, 2005).

130. James J. Kelly Jr., *A Continuum in Remedies: Reconnecting Vacant Houses to the Market*, 33 ST. LOUIS U. PUB. L. REV. 109, 111, 129 (2013) (arguing for the use of foreclosure mechanisms as an alternative to traditional code enforcement and eminent domain because eminent domain faces political backlash and “a neighborhood market that is strong enough to support full-scale rehabilitation of any structurally sound vacant house may weaken irreversibly if subjected to even spot use of eminent domain authority.”).

131. Complaint at 11, District of Columbia v. 10th & C Sts. Assocs., (filed May 9, 2022), <https://oag.dc.gov/sites/default/files/2022-05/1000CStreetFalseClaimsComplaint.pdf>.

132. Tenant Opportunity to Purchase Act, D.C. CODE § 42-3404.02 (2020); District Opportunity to Purchase Act, D.C. CODE § 42-3404.31 (2008).

TOPA.<sup>133</sup> The Mayor may also assign her opportunity to purchase to another party as long as the party demonstrates the capacity to own and manage the units and agrees to maintain the affordability of the housing.<sup>134</sup> However, D.C. may not want to purchase the property for a variety of reasons, such as the attendant obligation to manage the property and the costs associated with purchasing the property. Further, D.C. might be unable to deploy the resources required to assign its DOPA rights to a third party and oversee the party's compliance with the requirement that the property remains affordable. And while TOPA empowers tenants to purchase their buildings before they are placed on the market, often, it is difficult for tenants to acquire the capital necessary to purchase their building when the owner chooses to sell. TOPA also explicitly does not apply to single-family homes or accessory dwelling units on single-family lots unless the tenant is elderly or an individual with a disability.<sup>135</sup>

Some cities have implemented legislation giving qualified nonprofit organizations the right of first offer or refusal to buy properties for sale. In 2019, San Francisco adopted the Community Opportunity to Purchase Act (COPA), which granted qualified nonprofits the right of first offer or refusal on properties for sale in the city.<sup>136</sup> Nonprofits must apply to be placed on a list; when an entity wants to sell a residential property with three or more units or a vacant lot that can be developed into three or more residential units, by right, it must notify the nonprofits on the list.<sup>137</sup> Qualified nonprofits then have five days to notify the seller if they want to make an offer.<sup>138</sup> However, legislation like COPA falls short for the same reason that TOPA and DOPA do: restrictions on which properties are eligible for purchase under the program. While tenants and D.C. can assign their rights to other entities, there are limits on what properties can be acquired under TOPA and DOPA, with the former unavailable to tenants in single-family homes and the latter unavailable to purchase buildings with four units or fewer.<sup>139</sup> Therefore, the D.C. Council should pass legislation granting the right of first offer or refusal to CLTs, without restrictions on the types of residences that would be

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133. D.C. CODE §§ 42-3404.31(a), .02

134. *Id.* at § 3404.36.

135. *Id.* at § 3404.09.

136. Mayor's Off. of Hous. and Cmty. Dev., *Community Opportunity to Purchase Act (COPA)*, S.F.GOV, <https://sfmohcd.org/community-opportunity-purchase-act-copa> (Sept. 20, 2022). In 2022, a similar bill was proposed in New York City that would give CLTs and other approved developers two months to decide whether to exercise their right of first refusal. David Brand, *Community Land Trusts Would Get First Dibs at Buying Properties Under Revised Council Bill*, CITY LIMITS (Apr. 19, 2022), <https://citylimits.org/2022/04/19/community-land-trusts-would-get-first-dibs-at-buying-properties-under-revised-council-bill/>.

137. Mayor's Off. of Hous. and Cmty. Dev., *Community Opportunity to Purchase Act (COPA) Frequently Asked Questions*, S.F.GOV, [https://sfmohcd.org/sites/default/files/Documents/MOH/COPA/COPA%20FAQs\\_0.pdf](https://sfmohcd.org/sites/default/files/Documents/MOH/COPA/COPA%20FAQs_0.pdf).

138. *Id.*

139. D.C. CODE §§ 42-3404.02, 31.

eligible to ensure that CLTs are maximally equipped to purchase housing whenever the opportunity arises.<sup>140</sup>

### C. Additional Considerations

The D.C. Council should enact additional provisions that would help the Douglass CLT create and maintain permanently affordable housing. It could codify how assessments are made of CLT properties for property tax purposes.<sup>141</sup> If property taxes are high at the time of purchase, the CLT may have to provide a deeper up-front subsidy to make the housing affordable.<sup>142</sup> Further, if property taxes rise during ownership, the housing could become increasingly unaffordable, frustrating the purpose of CLTs and the preservation of affordable housing.<sup>143</sup> The Lincoln Institute of Land Policy, comprised of experts on community land trusts, offers a model policy for the taxation of CLT homes (the physical structure on the land only).<sup>144</sup>

The assessed value of any buildings located on CLT land should reflect the permanent restrictions that the ground lease imposes on their use and resale. Assessed values should therefore be lower than those of similar but unencumbered buildings. Given that a buyer would not reasonably pay more than the CLT's formula price for a restricted unit, this price is generally the best indicator of the "fair value" of a CLT home.<sup>145</sup>

As for the assessed value and taxation of the land, the Lincoln Institute recommends that the assessed value of the land should not be greater than the net present value of the income generated by monthly leasing fees collected over the lease term, which would be far below market levels.<sup>146</sup> The D.C. Council should enact provisions similar or identical to the models provided, particularly because the Douglass CLT has already acquired land and is currently in the process of acquiring more. Clarity on property assessment and taxation would provide a better picture of the costs associated with each affordable housing project.

The D.C. Council could also waive certain fees for developers working on CLT-partnered projects and provide for the upzoning or easing of zoning requirements for CLT housing.<sup>147</sup> This would make CLT projects more affordable for

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140. Fifty-nine percent of residential land in D.C. is zoned as single-family. GOV'T OF THE D.C., D.C. OFF. OF PLAN., SINGLE-FAMILY ZONING IN THE DISTRICT OF COLUMBIA. 6 (2020), [https://plandc.dc.gov/sites/default/files/dc/sites/Comprehensiveplan/007\\_Single%20Family%20Housing%20Report.pdf](https://plandc.dc.gov/sites/default/files/dc/sites/Comprehensiveplan/007_Single%20Family%20Housing%20Report.pdf).

141. For a more detailed explanation of how property value assessments impact the affordability of CLT properties over time, see DAVIS & JACOBUS, *supra* note 64, at 23–27.

142. DAVIS & JACOBUS, *supra* note 64, at 23.

143. *Id.* at 24.

144. *Id.*

145. *Id.*

146. *Id.* at 26.

147. *Id.* at 18.

developers and would also increase the number of units permitted on each parcel, maximizing the CLT's impact, particularly if CLTs are given the right of first refusal on single-family homes. Finally, the D.C. Council could provide a mechanism for giving government-owned land to CLTs for use or development as affordable housing or affordable commercial or nonprofit space. The Council could also explore transferring units of affordable housing built in compliance with D.C.'s inclusionary zoning program to the Douglass CLT for administration.<sup>148</sup>

## V. CONCLUSION

While community land trusts may not be the predominant model for increasing the stock of affordable housing in cities, they are emerging as a sustainable, fiscally responsible mechanism to create permanently affordable housing. Housing costs will continue to rise, and without an equivalent increase in wages, more Americans will find themselves unable to afford a home. Community land trusts seek to provide a remedy at the root of rising costs: the increasing value of land. It is imperative that governments support the work of CLTs to ensure they can be efficient, effective allocators of public and private resources to provide the greatest amount of affordable housing. Community land trusts face an uphill climb:

Those wishing to extend the reach of the CLT model . . . are challenged precisely by the fact that the land they wish to decommodify is already . . . commodified. Finding ways to secure and develop land depends . . . on some combination of creative fund-raising, sympathetic municipalities and the availability of land that can be removed from the market . . . Any large-scale transition to a CLT model, with land taken out of the equation and restrictions on equity gains on resale of housing, would require a shift in political, cultural and social outlook. The commodification and marketing of land have established a cycle that can be difficult to break.<sup>149</sup>

Luckily, community land trusts are not alone in their pursuit. The Douglass CLT has already secured the support of the community, philanthropic organizations, community development financial institutions, and other nonprofits.<sup>150</sup> It is time for the D.C. Council to do its part.

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148. Telephone Interview with Ginger Rumph, *supra* note 105.

149. Peredo & McLean, *supra* note 16, at 833.

150. See generally *Douglass Community Land Trust: Lasting Affordability Through Community Ownership*, DOUGLASS CLT, <https://douglassclt.org/> (last visited Oct. 28, 2022).