

Property Taxes and Community Land Trusts: A Middle Ground*

When Robert Swann first articulated his new approach to land ownership in 1972, he described a system wherein the user owns any buildings or improvements he places on the land, but leases the land itself from a nonprofit entity. Swann and his associates labeled this arrangement a Community Land Trust (CLT).¹ In exchange for the user paying a monthly rental fee for the land, Swann envisioned that the trust would pay the property taxes as well as any other costs associated with the land.² Swann hoped this arrangement would allow young farmers to obtain land at a relatively low cost as well as afford them long-term security on the land even if property values rose.³

Although he initially created the model for rural communities, Swann and his colleagues eventually established a think tank—the Institute for Community Economics (ICE)—that applied the CLT model to affordable housing as well.⁴ Early CLT models associated with affordable housing aimed to control the resale price of homes situated on CLT land in order to preserve class diversity in spite of gentrification.⁵ While many communities strive to develop business, local amenities, and schools, these improvements result in higher property values and often displace the very people the improvements initially aimed to help.⁶ The leaders of ICE saw their CLT model as a way to combat this problem.⁷

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1. See John Emmeus Davis, *Origins and Evolution of the Community Land Trust in the United States*, in THE COMMUNITY LAND TRUST READER 3, 17–18 (John Emmeus Davis ed., 2010) (discussing Swann’s 1972 publication that proposed the CLT model); Robert Swann, *The Community Land Trust: An Alternative*, SCH. COOPERATIVE INDIVIDUALISM, http://www.cooperativeindividualism.org/swann-robert_community-land-trust-an-alternative-1982.html (explaining the CLT model).

2. Swann, *supra* note 1.

3. *Id.*

4. *What Are Community Land Trusts?*, NAT’L COMMUNITY LAND TR. NETWORK, <http://www.clnetwork.org/index.php?fuseaction=Blog.dspBlogPost&postID=1396>; see also *A Biographical History of the Georgist Movement*, SCH. COOPERATIVE INDIVIDUALISM, http://www.cooperativeindividualism.org/georgists_unitedstates-sp-sz.html (noting that Robert Swann founded the Institute for Community Economics in 1968).

5. Davis, *supra* note 1, at 21–22.

6. See, e.g., Sarah Ilene Stein, Comment, *Wake Up Fannie, I Think I Got Something to Say to You: Financing Community Land Trust Homebuyers Without Stripping Affordability Provisions*, 60

Today, there are approximately 200 communities that operate CLTs and over 5,000 CLT homes in America.⁸ The presence of CLTs in America has rapidly expanded; indeed, “the number of CLTs nationwide has more than doubled in the last ten years.”⁹ Each CLT has a different focus and most, although staying true to the most basic tenets of Swann’s model, have diverged significantly from Swann’s initial conception. Perhaps most notable are the low number of CLTs—roughly 45%—that pay the property taxes for the land they own.¹⁰ This omission almost always affects the affordability of housing located on CLT land and ultimately undermines one of the primary policies behind CLTs.¹¹ On the opposite end of the spectrum, other CLTs benefit from state laws or municipal ordinances that allow them to utilize their 501(c)(3) tax-exempt status or other legal avenues to avoid paying property taxes for the land they own altogether.¹² This arrangement decreases the tax revenue municipalities can spend on infrastructure and schools,¹³ essential services to which low-income families that occupy CLT homes desperately need access.

This Note explores the challenge of maintaining the affordability of homes situated on CLT land while ensuring that schools and other taxpayer-funded social services do not suffer in communities with a significant CLT presence. Part I outlines the typical features and goals of CLTs in the context of affordable housing. Part II elucidates the impact rising property taxes can have on the affordability of CLT land, especially in gentrifying areas. Part III examines the range of approaches states and municipalities take when assessing the value of CLT land and begins to explore the effects of these approaches on municipal revenue. Part IV proposes applying a new tax structure that will temper the negative ramifications of both extremes discussed in the preceding parts of the Note and briefly concludes.

EMORY L.J. 209, 217 (2010) (acknowledging the fear the leaders of the Dudley Street Neighborhood Initiative had that this phenomenon would occur in their community).

7. See Davis, *supra* note 1, at 21–22 (calling the first urban CLT backed by ICE “a means for controlling the development and fate of an impoverished inner-city neighborhood”).

8. *What Are Community Land Trusts?*, *supra* note 4.

9. *Id.*

10. See Yesim Sungu-Eryilmaz & Rosalind Greenstein, *A National Study of Community Land Trusts* 3 (Lincoln Inst. of Land Policy, Working Paper No. WP07YS1, 2007) (suggesting that 10% of CLT homeowners pay their property taxes directly to the locality and reporting that another 45% of CLT homeowners reimburse the CLT for the property taxes levied on the land on which their homes are built, which implies that a total of 55% of homeowners pay the property taxes on CLT land and therefore that the other 45% of CLT property taxes are paid by the CLTs themselves).

11. BURLINGTON ASSOCS. IN CMTY. DEV., LLC, PROPERTY TAXES AND COMMUNITY LAND TRUSTS 1.

12. See, e.g., TEX. TAX CODE ANN. § 11.1827 (West Supp. 2012) (listing the requirements for a community land trust to avoid Texas property taxes).

13. See JOHN S. O’BRIEN, LEGIS. BUDGET BD., FISCAL NOTE, S. 82-402, Reg. Sess., at 1 (Tex. 2011) (explaining that a tax exemption for CLTs would have a fiscal impact on municipalities and counties).

I. An Introduction to the Community Land Trust Model

A. Structural Features

Although each CLT operates differently, most share certain core characteristics.¹⁴ All CLTs are nonprofit,¹⁵ community-based organizations.¹⁶ These organizations acquire multiple parcels of land in a specific geographic area with the intention of owning the land in perpetuity.¹⁷ They then lease the land to private parties via transferable ninety-nine-year ground lease agreements.¹⁸ A separate entity—usually the lessee—owns the structures that sit atop the land.¹⁹ Nevertheless, the ground lease enables the CLT to limit the purpose for which the lessee can use the land (i.e., the leases can stipulate that a house lot must remain a house lot) and to restrict the resale price of the home via a formula laid out in the lease.²⁰ This model theoretically “removes the cost of land from the housing price”²¹ while still allowing the CLT to control the affordability of the homes associated with its land.²²

Most CLTs strive to keep their operations local and tailored to the specific needs of the community in which they are located.²³ To that end, an even proportion of CLT leaseholders, residents of the community at large, and miscellaneous individuals including but not limited to local government representatives and private lenders sit on the board of the typical CLT.²⁴ Additionally, most CLTs have two groups of voting members—one including every one of the CLT’s lessees and one representing any adult who lives within the “community” as defined by the CLT and who has an interest in joining the organization.²⁵

14. *What Are Community Land Trusts?*, *supra* note 4.

15. *Id.*

16. JOHN EMMEUS DAVIS, NAT’L HOUS. INST., SHARED EQUITY HOMEOWNERSHIP 19 (2006).

17. Sungu-Eryilmaz & Greenstein, *supra* note 10, at 10.

18. C. GEORGE BENELLO ET AL., BUILDING SUSTAINABLE COMMUNITIES 38 (2d ed. 1997). Although ninety-nine-year ground leases are used 95% of the time, the length of leases CLTs employ range from twenty to ninety-nine years. Sungu-Eryilmaz & Greenstein, *supra* note 10, at 3. Some state laws require a shorter lease term. DAVIS, *supra* note 16, at 18.

19. DAVIS, *supra* note 16, at 18.

20. BENELLO ET AL., *supra* note 18, at 38.

21. Sungu-Eryilmaz & Greenstein, *supra* note 10, at 6.

22. DAVIS, *supra* note 16, at 18.

23. *See, e.g.*, Sungu-Eryilmaz & Greenstein, *supra* note 10, at 9 (stating that each CLT surveyed was created as a response to specific needs in each community).

24. *Id.* at 22. Approximately 30% of CLTs have this “classic tri-partite board structure.” *Id.* The remainder of CLTs vary in how they structure their boards. *Id.*

25. DAVIS, *supra* note 16, at 19.

B. *Common Objectives Among CLTs*

Virtually every CLT strives to achieve sustained affordability of housing.²⁶ Houses on CLT land are much cheaper than their conventional counterparts—often by margins of 70% or 75%—because buyers do not pay for the value of the land when they purchase their home.²⁷ Additionally, CLTs often subsidize the home purchase, especially in cases where outside parties have donated land to the CLT.²⁸ When the original buyer wants to sell his house, CLTs invoke the ninety-nine-year ground lease, limiting the amount at which lessees can resell their house, to protect affordability for the next buyer.²⁹ This mechanism is particularly effective because the lease lasts even if the CLT that created it dissolves.³⁰

On a more global level, CLTs aim to shift the control of land from the hands of private developers to the shared community at large.³¹ Indeed, commentators on affordable housing policy have long criticized developments that originate as affordable units in order to accumulate tax incentives and other perks, but are quickly resold in order to earn developers a high return on their investment.³² Policy makers also lament the practices of many outside investors who acquire deteriorating buildings only to charge high rent to low-income families facing limited housing options.³³ CLTs, conversely, seek only the profits necessary to sustain their model.³⁴ Their primary goal is not to reap financial reward, but rather to facilitate “long-term community control of neighborhood resources.”³⁵ To that end, the CLT model rewards individuals that work to economically develop their region by funneling the value they create to their own community instead of to disinterested outsiders.³⁶

26. *Id.* at 54; Sungu-Eryilmaz & Greenstein, *supra* note 10, at 9; *What Are Community Land Trusts?*, *supra* note 4.

27. See Benito Arruñada & Amnon Lehavi, *Prime Property Institutions for a Subprime Era: Toward Innovative Models of Homeownership*, 8 BERKELEY BUS. L.J. 1, 11 (2010) (noting that buyers of CLT houses pay an average of 25%–30% of the market price).

28. *Id.* at 12.

29. *Id.* at 9–10.

30. DAVIS, *supra* note 16, at 54.

31. *What Are Community Land Trusts?*, *supra* note 4 (identifying the universal mission of CLTs “to increase long-term community control of neighborhood resources” and “empower residents through involvement and participation in the organization”).

32. See, e.g., Peter W. Salsich, Jr., *A Decent Home for Every American: Can the 1949 Goal Be Met?*, 71 N.C. L. REV. 1619, 1640 (1993) (describing investor impatience and listing several legislative responses to combat such impatience and preserve low-income housing opportunities).

33. *Community Land Trusts: Why Use It?*, POLICYLINK, http://www.policylink.org/site/c.lkIXLbMNJE/b.5136897/k.2C06/Why_Use_it.htm.

34. See *What Are Community Land Trusts?*, *supra* note 4 (“CLTs do not need additional subsidies each time the house resells.”).

35. *Id.*

36. *About Community Land Trusts*, GROUNDSPARK, http://groundspark.org/our-films-and-campaigns/homehands/hh_about#lowincome.

In addition to monitoring affordability and cultivating community resources, CLTs also institute protections designed to help lessees succeed as homeowners. For example, CLT leases allow the corporation to step in and cure any default the homeowner may incur in order to help said homeowner avoid foreclosure.³⁷ CLTs also often require their prospective lessees to undergo financial training before obtaining a mortgage.³⁸ These trainings cover topics such as the credit options available to low-income homebuyers and the appropriate relationship between property value and loan amount.³⁹ This involvement on the part of CLTs has proven effective; in 2008, the foreclosure rate of CLT homes was 0.52% as compared with the national rate of 3.3%.⁴⁰

C. *General Criticisms of the CLT Model*

Despite the benefits CLTs offer homebuyers, the model has its critics.⁴¹ To begin with, the ground leases restrict the resale price homeowners can seek.⁴² While this restriction preserves access to affordable housing for prospective homebuyers, it also limits the return homeowners receive on their investment.⁴³ CLTs often respond to this criticism by pointing out that their model provides a middle ground between leasing and owning.⁴⁴ Many CLT homeowners could not afford to own a house if they had to buy the land as well,⁴⁵ so the resale restrictions pose no greater an imposition on homeowners than if their economic constraints precluded homeownership in the first place. Furthermore, the resale restrictions do not eliminate homeowner profits entirely; most ground leases allow the original price to increase by 25% of any increase in the market value of the home.⁴⁶

37. DAVIS, *supra* note 16, at 19. Fannie Mae and the Institute for Community Economics have agreed to attach a rider to the Uniform Community Land Trust Ground Lease for mortgages that will be sold to Fannie Mae. JOSEPH L. MINNICH III & KEVIN R. HICKEY, FANNIE MAE GUIDELINES ON THE VALUATION OF A PROPERTY SUBJECT TO A LEASHOLD INTEREST AND/OR COMMUNITY LAND TRUST (CLT) 3 (2001). This rider will allow “for the removal of resale . . . restrictions that would hinder the mortgagee’s ability to dispose of the property upon foreclosure.” *Id.*

38. Arruñada & Lehavi, *supra* note 27, at 12.

39. *Id.*

40. *Id.* at 11. The Mortgage Bankers Association calculated these percentages in early 2009. *Id.*

41. See URBAN STRATEGIES COUNCIL, AN INTRODUCTION TO COMMUNITY LAND TRUSTS 2 (2007) (articulating common criticisms of the model).

42. DAVIS, *supra* note 16, at 19.

43. *Id.*; see also *Frequently Asked Questions*, SHARED EQUITY HOMEOWNERSHIP, <http://www.homesthatlast.org/faq/> (“Shared equity homeownership programs maintain affordability by limiting the extent to which homeowners can profit from rising home prices. This limitation strikes some people as unfair.”).

44. See Arruñada & Lehavi, *supra* note 27, at 11 (“The property product designed by CLTs is located at an intermediate point along the landownership/lease continuum. It divides the bundle of property rights between the individual homeowner and the land trust in an innovative manner, rather than opting for the conventional ‘own all or nothing’ strategy.”).

45. *Id.* at 11–12.

46. *Id.* at 10.

Additionally, the CLT lease contains other potentially paternalistic provisions such as a prohibition on absentee ownership and limitations on the homeowners' ability to sublet their home.⁴⁷ CLTs may view these restrictions as necessary precautions to ensure homeowners do not receive a windfall by buying a price-controlled home and then renting it out at market rates.

Finally, most CLTs pass the property taxes for the land they own on to their lessees.⁴⁸ The goal of many CLTs to revitalize the community, which if achieved raises both the value of the land and very likely the property tax owed, makes their simultaneous commitment to permanent affordability a challenge.⁴⁹ To get a sense of the property tax consequences of economic development, a few examples are in order.

II. Gentrification and Its Impact on Property Taxes

When efforts to revitalize a community—a key undertaking of most CLTs—are effective, gentrification may occur.⁵⁰ Larry Keating defines gentrification “as the upward change in land use to middle and upper income residential.”⁵¹ As Ebenezer O. Aka points out, scholars characterize the higher property values that result from gentrification as a double-edged sword.⁵² On one hand, high property values result in higher tax revenue, which in turn leads to economic benefits for the local neighborhood, municipality, county, and state.⁵³ On the other hand, however, these high tax rates mean that citizens have to pay a higher price for living in an improving area.⁵⁴ As Aka goes on to note, many long-term residents of gentrifying communities are unable to keep up with increasing property tax rates as property values begin to rise.⁵⁵

The problem Aka identifies pervades communities throughout the nation. From 1990 to 2000, the median housing price in five gentrifying neighborhoods in Atlanta rose from \$48,200 to \$116,700.⁵⁶ In the Sawmill community of Albuquerque, New Mexico, property values increased from

47. DAVIS, *supra* note 16, at 19.

48. *See supra* note 10 and accompanying text.

49. BURLINGTON ASSOCS. IN CMTY. DEV., LLC, *supra* note 11, at 1.

50. Ebenezer O. Aka, Jr., *Gentrification and Socioeconomic Impacts of Neighborhood Integration and Diversification in Atlanta, Georgia*, 35 NAT'L SOC. SCI. J. 1, 2 (2010).

51. *Id.* at 1.

52. *Id.* at 2; *see also* ROWLAND ATKINSON, ESRC CTR. FOR NEIGHBOURHOOD RESEARCH, DOES GENTRIFICATION HELP OR HARM URBAN NEIGHBOURHOODS? AN ASSESSMENT OF THE EVIDENCE-BASE IN THE CONTEXT OF THE NEW URBAN AGENDA 7 (2002) (contrasting the benefits of gentrification such as increased property values and increased local fiscal revenue with the drawbacks such as displacement through rent and price increases).

53. Aka, *supra* note 50, at 2.

54. *Id.*

55. *Id.*

56. *Id.* at 6.

\$1.05 per square foot of undeveloped land in 1995 to \$4.10 per square foot about a decade later.⁵⁷ As the national research and action institute PolicyLink identified, rising property taxes have been a major challenge facing Albuquerque homeowners.⁵⁸ Indeed, these taxes tripled between 1995 and 2000.⁵⁹

East Austin, Texas, is undergoing gentrification as well, and a CLT based there is working to contribute to the revitalization. The Guadalupe Neighborhood Development Corporation (GNDC) utilizes the CLT model⁶⁰ while “work[ing] for the improvement, revitalization and preservation of the residential neighborhood.”⁶¹ The GNDC operates exclusively in East Austin, a neighborhood that has experienced a meteoric rise in land value since 2000. Indeed, the City of Austin’s Department of Planning found that “property value in East Austin’s 78702 ZIP code increase[d] more than 100 percent from 2000 to 2005.”⁶² From 2003 to 2004 alone, land values surrounding the upscale condo installation Pendernales Lofts increased by as much as 70 percent.⁶³ East Austin residents have expressed concern that they will have to move because of increasing property values and the attendant increase in property taxes.⁶⁴ A 64-year-old lifetime resident of East Austin who lives two blocks from Pendernales Lofts said “her tax bill rose more than \$200 as her property value jumped from \$38,944 to \$47,792” within the span of a year.⁶⁵ According to the Austin American-Statesman, “[t]he leap was almost entirely because of the increase in the value of her land, from \$15,000 to \$22,500.”⁶⁶ Another family that lives a few doors down from the lofts say they may have to leave the home they have occupied for over three decades.⁶⁷

These stories make clear that CLTs must address the problem of property taxes when exploring ways to sustain affordability and avoid gentrification-induced displacement. The next Part details the ways in which CLTs have attempted to handle this issue.

57. *Community Land Trusts: Case Studies*, POLICYLINK, http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136913/k.7B27/Case_Studies.htm#1.

58. *Id.*

59. *Id.*

60. See GUADALUPE NEIGHBORHOOD DEV. CORP., ANNUAL REPORT 6 (2010) (describing GNDC’s plans to place property in East Austin in its land trust).

61. *Mission*, GUADALUPE NEIGHBORHOOD DEV. CORP., http://guadalupendc.org/?page_id=5.

62. Cate Smithson, *Extreme Makeover: Gentrification Transforms East Austin*, ABC NEWS (Apr. 27, 2009), <http://abcnews.go.com/OnCampus/story?id=7399717&page=1#.T5buXZh1-fQ>.

63. Jeremy Schwartz, *Urban-Style Condominiums Are Bringing Lofty Hopes, Fears of Gentrification to a Historically Latino Neighborhood*, AUSTIN AMERICAN-STATESMAN, May 5, 2005, at A1.

64. *Id.*

65. *Id.* at 3.

66. *Id.*

67. *Id.*

III. Current Approaches to the Taxation of CLT Land

Although property taxes play a significant role in determining whether a CLT model succeeds or fails,⁶⁸ outside forces limit most property tax choices available to CLTs. For example, CLTs must decide whether to pay their own property taxes or to pass the property taxes on to their lessees either directly or through a higher lease payment.⁶⁹ CLTs can only choose to absorb the cost of taxes on the land themselves if they receive enough outside funding. They usually rely on the same sources of funding as other affordable housing programs,⁷⁰ and this funding has been slashed in recent years.⁷¹ Many CLTs would prefer to allocate the funding they receive to acquiring land that is capable of helping as many families as possible.⁷² As a result, virtually all CLTs pass the property taxes levied on the land onto the homeowner.⁷³

In an attempt to reign in property tax bills for their lessees, CLTs often try to influence the assessed value of their land.⁷⁴ To do this, however, CLTs must work within the confines imposed by their state or local government, and these parameters frequently undergo changes as courts, state agencies, and legislators take up the issue of what constitutes the appropriate level of taxation of CLTs.⁷⁵ State governments—and even local jurisdictions within each state—vary widely in their approach to this issue.⁷⁶ Individual localities conduct their own property value assessments, but some states step in and advise their localities on best practices when assessing the value of CLT land.⁷⁷ Other states directly legislate the matter.⁷⁸

68. See NAT'L CMTY. LAND TRUST NETWORK, *Property Tax Assessments*, in THE CLT TECHNICAL MANUAL ch. 17, at 1–5 (Kirby White ed., 2011) (emphasizing the role property taxes play in determining affordability and detailing the way that several CLTs address the issue).

69. *Id.* at 1.

70. *Community Land Trusts: Financing*, POLICYLINK, <http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136909/k.EAF3/Financing.htm>.

71. See, e.g., Blake Aued, *Congress Cuts Funding for Athens Affordable Housing*, ONLINE ATHENS, ATHENS BANNER-HERALD, <http://onlineathens.com/local-news/2012-02-07/congress-cuts-funding-athens-affordable-housing> (last updated Feb. 8, 2012) (“Federal funding for affordable housing in Athens will be cut nearly in half this year.”); Peter Bodley, *Feds Slash Affordable Housing Funds*, ABC NEWSPAPERS (Mar. 19, 2012), <http://abcnewspapers.com/2012/03/19/feds-slash-affordable-housing-funds/> (“The Anoka County Housing and Redevelopment Authority (HRA) Feb. 14 [sic] had 28 percent less in federal HOME (Home Investment Partnership Program) dollars to allocate this year compared with 2011.”).

72. See *Community Land Trusts: Challenges*, POLICYLINK, <http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136905/k.1FF4/Challenges.htm> (expressing appreciation for the \$400,000 grant the Anti-Displacement Program gifted to the Portland Community Land Trust but lamenting the limited number of families the money would likely be able to help).

73. NAT'L CMTY. LAND TRUST NETWORK, *supra* note 68, ch. 17, at 1.

74. BURLINGTON ASSOCS. IN CMTY. DEV., *supra* note 11, at 2 (detailing a fight the Community Land Trust in Orange County is waging with local assessors).

75. NAT'L CMTY. LAND TRUST NETWORK, *supra* note 68, ch. 17, at 1.

76. BURLINGTON ASSOCS. IN CMTY. DEV., *supra* note 11, at 1.

77. NAT'L CMTY. LAND TRUST NETWORK, *supra* note 68, ch. 17, at 3.

78. *Id.*

This Part explores a sampling of approaches different states and localities take to the taxation of CLT land. It identifies which approaches facilitate the achievement of the overarching goals of CLTs and which approaches undermine those goals, while remaining mindful of the vital services municipalities rely on property tax revenue to provide.

A. *Determination of CLT Property Taxation Conducted at a Local Level*

Although several states do not have laws that require municipalities to factor the restrictions imposed on CLT land into the assessed value of the property, most of these states do not prohibit local assessors from doing so.⁷⁹ Illinois and Washington do not have any special tax legislation, but the state of Washington, for example, has “fairly widespread support from assessors in jurisdictions with price-restricted units.”⁸⁰ Assessors in other states—such as New York—are less willing to modify property values because of CLT restrictions.⁸¹ Below are some approaches localities with no state oversight take to CLT property taxation.

1. *The Locality Levies No Taxes on the Land.*—Some localities that lack state guidance direct their assessors to value CLT land at \$0. Albuquerque, New Mexico, for example, takes this approach toward the land owned by Sawmill Community Land Trust.⁸² When Sawmill CLT drafted its lease agreement in 2006, it indicated that it would bake the price of property taxes into the land lease fee that it charged its lessees.⁸³ The high property taxes in Albuquerque—indeed, property taxes tripled between 1995 and 2000—prompted Sawmill to negotiate with the tax assessor in an attempt to make its properties tax exempt.⁸⁴ The assessor responded favorably—Bernalillo County now assesses the net taxable value of Sawmill land to be \$0 and cuts the value of the improvements atop the land to one-third of fair market value in order to calculate property taxes.⁸⁵ By way of example, the County

79. RYAN SHERRIFF, CTR. FOR HOUS. POLICY, SHARED EQUITY HOMEOWNERSHIP STATE POLICY REVIEW 14 (2010).

80. *Id.* at 14–15.

81. See David West, *Valuation of Community Land Trust Homes in New York State*, J. PROP. TAX ASSESSMENT & ADMIN., Oct. 2011, at 15, 22 (“[New York a]ssessors are unsure of the validity of the CLT model and don’t know how to fit CLT homes into the prescribed property types and typical transaction models.”).

82. BURLINGTON ASSOCS. IN COMM. DEV., *supra* note 11, at 2.

83. SAWMILL CMTY. LAND TRUST, LAND LEASE AGREEMENT 6 (2006).

84. *Community Land Trusts: Case Studies*, POLICYLINK, <http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136905/k.1FF4/Challenges.htm>.

85. For an illustration of this valuation process, one can search the Bernalillo County records for a specific property, and then compare the land valuations in different years. See *Property Search*, BERNALILLO COUNTY, N.M., <http://www.bernco.gov/property-tax-search/>. For example, the 2006 and 2011 Notice of Values for 1028 19th Street NW show that the land was valued at \$21,012 in 2006 and \$0 in 2011. 2011 Notice of Values, 1028 19th St NW, BERNALILLO COUNTY, N.M. (2012), <http://www.bernco.gov/property-tax-search-result-details/>; 2006 Notice of Values, 1028 19th St NW, BERNALILLO COUNTY, N.M. (2012), <http://www.bernco.gov/property-tax-search->

charged a parcel of Sawmill CLT land \$898.70 in property taxes in 2006 and \$0 in 2011 as a result of the county assessor's choice to value CLT land at \$0.⁸⁶

While CLTs in New Mexico laud the assessor's willingness to eliminate taxation on CLT land, this practice decreases revenue in a county that already spends more than it earns.⁸⁷ Indeed, the New Mexico Business Coalition estimated that the state of New Mexico needed \$13 million in 2011 in order to comply with state laws requiring a balanced budget.⁸⁸ Because of this revenue shortage, the state asked Bernalillo County commissioners to raise property taxes an average of \$30 on a \$150,000 home.⁸⁹ Given this request, the County should reconsider the way it values CLT properties (indeed, the County lost \$898.70 by valuing CLT property at \$0 in the example above)⁹⁰ in order to rejuvenate its revenue stream and continue funding local services without adding to the state deficit.

2. The Locality Assesses Property Encumbered by CLT Restrictions Differently than Unencumbered Property.—Some local tax assessors acknowledge CLT restrictions when assessing the value of the property even though the state does not direct them to do so. Moraine Township in Illinois, for example, assesses the value of CLT homes based on the restricted resale price contained in the ground lease.⁹¹ Section III(B)(2) of this Note addresses the impacts of such a practice in the context of the state uniformly imposing a modified valuation requirement on CLT property.

3. Local Jurisdictions Assess CLT Property at Fair Market Value.—In states that do not have specific legislation directing the tax assessment of CLT properties, local jurisdictions control the method of assessment.⁹² As Ryan Sherriff of the Center for Housing Policy has noted, “Even if some assessors agree [to take shared equity restrictions into account when

result-details/. The 2011 Notice of Values for the same property considered a third of the full value of the improvements as the taxable value. *2011 Notice of Values, 1028 19th St NW, supra*.

86. *Compare 2006 Tax Bill, 1028 19th St NW, BERNALILLO COUNTY, N.M.*, <http://www.berncogov/property-tax-search-result-details/> (assessing \$898.70 in taxes on land and improvements), *with 2011 Tax Bill, 1028 19th St NW, BERNALILLO COUNTY, N.M.*, <http://www.berncogov/property-tax-search-result-details/> (assessing \$1,226.64 in taxes on improvements and \$0 on land).

87. *See* Press Release, N.M. Bus. Coal., Bernalillo County Commission Weighs Tax Increase (Sept. 20, 2011), *available at* http://www.nmbizcoalition.org/Weekly_Emails.aspx (noting that county commissioners “faced . . . more government expenses than there [was] revenue” in 2010 and 2011).

88. *Id.*

89. *Id.*

90. *See supra* note 86.

91. SHERRIFF, *supra* note 79, at 15.

92. *Id.* at 14–15.

assessing property values], others may not follow suit, creating a potential barrier for price-restricted, shared equity homes.”⁹³

New York, for example, does not have a state law guiding property value assessment of CLTs.⁹⁴ In fact, the Appellate Division of the New York Supreme Court in *In re 78 South First Street Housing Development Fund Corp. v. Commissioner of Finance of New York*⁹⁵ held that assessors need not factor certain limited restrictions into their property valuation analysis.⁹⁶ In arriving at this decision, the court reasoned that the legislature would have included a provision urging value modification had it wanted to require assessors to take that course of action.⁹⁷ The New York State Department of Taxation and Finance issued a related opinion three years after *78 South First Street*, which ruled, “In determining the assessed value of a single family residence, an assessor is not bound by an impermanent restriction on resale price voluntarily agreed to by a recipient of a federal subsidy paid to a low or moderate income buyer of such a residence.”⁹⁸ While this opinion does not directly reference CLT property, the phrase “impermanent restriction” applies to CLT property,⁹⁹ thus paving the way for assessors to refuse to adjust property values for CLT land.

Due to the paucity of legislative guidance, assessors in New York municipalities are largely left to their own devices.¹⁰⁰ David West contacted assessors charged with valuing CLT property in New York to get a sense of how they respond to this freedom.¹⁰¹ He found that some assessors do take the restrictions CLTs place on property into account; they liken the resale restrictions “to an easement or other restrictive covenant that an informed buyer would consider in [the] sale price.”¹⁰² West spoke with other assessors, however, who did not assess CLT property differently than regular residential property.¹⁰³ These assessors expressed two main concerns. First, they worried that CLTs imposed “undue influence on the sale” and that buyers may not have acted “prudently or knowledgeably” when purchasing a

93. *Id.* at 15.

94. Carla J. Robinson, *Valuation and Taxation of Resale-Restricted, Owner-Occupied Housing* 21 (Lincoln Inst. of Land Policy, Working Paper WP08CR1, 2008).

95. 616 N.Y.S.2d 405 (N.Y. App. Div. 1994).

96. *Id.* at 405.

97. *Id.* at 408–09.

98. OFFICE OF REAL PROP. TAX SERVS., N.Y. DEP’T OF TAXATION & FIN., VOL. 10, OPINIONS OF COUNSEL SBRPS NO. 34 (1997).

99. *See id.* (discussing New York’s tax assessment laws as they apply to low-income housing properties, such as those started by the Housing Action Coalition).

100. *See* West, *supra* note 81, at 20 (“The de facto policy is that assessors can, and in some cases do, consider resale restrictions in assessment, but if the assessor does not, CLTs’ homeowners cannot force consideration.”).

101. *Id.*

102. *Id.*

103. *Id.*

home on CLT land.¹⁰⁴ Second, they expressed concerns that appraising CLT land lower than unencumbered land would affect the value of other properties in the neighborhood.¹⁰⁵

John Emmeus Davis conducted a hypothetical analysis to illustrate the gravity of situations where assessors value CLT property at fair market rates.¹⁰⁶ In that analysis, Davis presented a house valued at \$210,000 that a shared-equity scheme that functions similarly to a CLT enabled a low-income individual to buy for \$85,000.¹⁰⁷ If the house appreciated at a rate of 7% per year, Davis calculated that the house would be worth \$295,000 in five years.¹⁰⁸ Because of the restrictions incorporated into the typical CLT ground lease, however, the buyer may only be able to sell the house for \$94,000 after those same five years.¹⁰⁹ In light of this analysis, Davis emphasized,

If the municipal assessment of her property does not take into account either its below-market purchase price or its restricted resale price, the homeowner will be taxed as if 100% of this value belonged to her. By her fifth year of occupancy, in this particular case, she would be forced to pay property taxes on \$201,000 of value she does not own.¹¹⁰

This example illustrates that high tax rates imposed on CLT land pose a significant challenge to affordability for many low-income individuals, thereby undermining a primary goal of the CLT model.¹¹¹

B. State Legislation of CLT Property Taxation

In light of the risk that the municipal tax assessor may not value CLT land differently than unencumbered land, thereby jeopardizing the affordability of CLT property, many states have passed laws requiring each municipality to value CLT land in a specific, uniform way. Below are some forms such legislation assumes.

1. Exemption.—Several states have enacted laws that make property owned by a CLT tax-exempt. For example, the 2011 session of the Texas legislature passed a bill that requires municipalities to offer such an

104. *Id.*

105. *Id.*

106. DAVIS, *supra* note 16, at 85.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *See id.* (“At a certain point, no matter how affordable the cost of purchasing these resale-restricted homes may have been, taxes that are pegged to the property’s market value will render the cost of holding these homes unaffordable for persons of modest means.”).

exemption.¹¹² Specifically, the law states that organizations are entitled to a real property tax exemption if they meet the following requirements: (1) the organization is exempt from federal taxation under Section 501(a); (2) a majority of the board of directors of the organization have their primary residence in the state; and (3) at least two of the board positions are reserved for a low-income individual residing in the state, an individual whose residence is located in a low-income area, or a representative appointed by the organization who represents low-income individuals.¹¹³ Additionally, the law mandates that the appraiser use a specific method for appraising the restricted property “regardless of whether the chief appraiser considers that method to be the most appropriate method of appraising the property.”¹¹⁴

The fiscal analysis that accompanied the introduction of the bill does not attempt a detailed analysis of the potential impact the bill could have on municipal revenue. The analysis merely notes, “There could be a fiscal impact to a municipality or a county that created or designated community land trusts, but the amounts would vary depending on the number of property tax exemptions granted and the value of the optional exemptions.”¹¹⁵ The analysis goes on to express the assumption that a municipality will not offer property tax exemptions if it could not afford to do so.¹¹⁶ This assumption suggests that the ability of municipalities in Texas to offer exemptions that will help CLT homeowners afford their homes is limited by their capacity to generate enough revenue to operate the services for which they are responsible.

2. Modification of CLT Land Valuation Scheme.—Some states have enacted laws that entitle CLT land to a unique property-valuation scheme stipulating how the CLT’s restrictions should impact the assessed value of its land. For example, North Carolina enacted a law in 2009 that dictates a special appraisal method for assessors to employ on CLT land.¹¹⁷ To qualify as a CLT under this statute, the organization must be a nonprofit housing development entity with 501(c)(3) status that transfers its property to a qualifying owner.¹¹⁸ The CLT must possess the characteristics described in subpart I(A) of this Note: it must retain an interest in the property pursuant to

112. See TEX. TAX CODE ANN. § 11.1827 (West Supp. 2012) (providing specific requirements that CLTs must satisfy to be entitled to tax-exempt status); see also *id.* § 11.1825 (providing additional requirements CLTs and all organizations constructing or rehabilitating low-income housing must satisfy to be entitled to tax-exempt status).

113. See *id.* § 11.1825(b) (listing these requirements, as well as that the organization has a purpose of providing low-income housing, has met the requirements of a charitable organization, and has a formal policy for communicating with the project’s households).

114. *Id.* § 11.1825(q).

115. JOHN S. O’BRIEN, LEGIS. BUDGET BD., FISCAL NOTE, S. 82-402, Reg. Sess., at 1 (Tex. 2011).

116. *Id.*

117. N.C. GEN. STAT. § 105-277.17 (2011).

118. *Id.* § 105-277.17(b)(1).

a ground lease for not less than ninety-nine years, and it must include resale restrictions that limit the price for which homeowners can sell the improvements atop its land.¹¹⁹

If the entity qualifies as a CLT pursuant to the above requisites, the statute spells out a specific valuation scheme property-value assessors must employ.¹²⁰ The statute terms the first appraisal after a property is classified as CLT land the initial investment basis, which the statute defines as “[t]he most recent sales price, excluding any silent mortgage amount, of community land trust property.”¹²¹ It then decrees that subsequent reappraisals may not exceed the sum of the initial investment basis and the capital gain allowed in the CLT’s ground lease.¹²²

Provided that the fair market value of the land exceeds this statutory cap, the valuation scheme lowers the value of CLT land for property tax purposes.¹²³ The General Assembly of North Carolina conducted a study in association with the bill in order to ascertain the extent of the scheme’s impact on municipal revenue.¹²⁴ The study identified three community land trusts in North Carolina that would qualify under the statute: Durham Community Land Trust, Orange Community Housing and Land Trust (which has since been renamed Community Home Trust),¹²⁵ and Cape Fear Housing Land Trust.¹²⁶

At the time of the study, the Orange Community Housing and Land Trust owned 135 properties—127 in Chapel Hill and 8 in Carrboro—that were subject to property taxes.¹²⁷ The trust estimated that the assessed values would drop an average of \$36,449.30 in Carrboro and \$9,970.13 in Chapel Hill.¹²⁸ As demonstrated by the chart below, this decrease in value would cause a total tax loss of \$28,571.48 to the taxing entities affected, which includes a loss of \$3,593.02 in revenue for the Carrboro–Chapel Hill School District.¹²⁹

119. *Id.* § 105-277.17(b)(2), (7).

120. *Id.* § 105-277.17(c).

121. *Id.* § 105-277.17(b)(5), (c).

122. *Id.* § 105-277.17(c).

123. MARJORIE RUTHERFORD, FISCAL RESEARCH DIV., LEGISLATIVE FISCAL NOTE, H. 2009-481, Gen. Sess., at 2 (N.C. 2009).

124. *Id.* at 1–3.

125. *About Us*, COMMUNITY HOME TR., <http://communityhometrust.org/about-us/>.

126. MARJORIE RUTHERFORD, FISCAL RESEARCH DIV., LEGISLATIVE FISCAL NOTE, H. 2009-481, Gen. Sess., at 2 (N.C. 2009).

127. *Id.*

128. *Id.*

129. *See id.* at 3 (breaking down the tax revenue lost by each affected entity that, when added together, totals \$28,571.48).

Potential Impact of CLT Valuation Scheme on Municipal Revenue¹³⁰

Local Taxing Entity	Tax Rate (per \$100)	Total Drop in Value	Total Tax Loss
Orange County	\$0.998	(\$1,562,181.92)	(\$15,590.58)
City of Carrboro	\$0.686	(\$295,917.00)	(\$2,030.88)
City of Chapel Hill	\$0.581	(\$1,266,264.92)	(\$7,327.00)
Carrboro–Chapel Hill School District	\$0.230	(\$1,562,181.92)	(\$3,593.02)

To put the lost revenue to the school district in perspective, for the 2009–2010 fiscal year, the Orange County Board of Commissioners projected that it would allocate \$3,096 per student to Chapel Hill Carrboro City and Orange County Public Schools.¹³¹ The Board also reported that the Carrboro–Chapel Hill schools would receive a total of \$18.7 million from the special district tax during the 2009–2010 fiscal year.¹³² Finally, the Board noted that revenue losses from the prior year did not result in a decrease in school funding,¹³³ which demonstrates at least some commitment to maintaining school funding levels despite fluctuations in revenue and ultimately suggests that the modified valuation does not lower property tax revenue in a way that municipalities cannot afford.

3. *State Legislation Adjusting Property Taxes Based on Income.*—Some states limit property tax amounts for individuals below a certain income threshold. These limitations end up applying to most CLT homeowners because of the income restrictions CLTs place on parties interested in leasing CLT land.¹³⁴ Vermont incorporated such a limitation into a comprehensive education act entitled the Equal Educational Opportunity Act of 1997.¹³⁵ In Vermont, public education is funded by a combination of state grants and a homestead property tax.¹³⁶ Homestead property taxes comprised approximately \$312 million of the state's total education budget for fiscal year 2007.¹³⁷ Despite the continued need for property tax revenue to round out

130. *Id.*

131. Orange Cnty. Bd. of Comm'rs, Minutes of May 26, 2009 Budget Public Hearing 3 (Aug. 18, 2009).

132. *Id.*

133. *Id.* at 1.

134. See, e.g., SAWMILL CMTY. LAND TRUST, *supra* note 83, at 14–15 (stipulating that the income of CLT lessees must be less than a certain percentage of the median income in order to qualify to purchase a home atop CLT land).

135. See Equal Educational Opportunity Act of 1997 § 51, 1997 Vt. Acts & Resolves 279, 320–24 (codified as amended at VT. STAT. ANN. tit. 16, §§ 6061–66 (2004)) (detailing the Homestead Property Tax Income Sensitivity Adjustment provisions of the Act).

136. VT. DEP'T OF EDUC., OVERVIEW OF VERMONT'S EDUCATION FUNDING SYSTEM UNDER ACT 68 & ACT 130, at 2 (2006).

137. *Id.*

the state's education budget, the Act's establishment of state education block grants supplements local property tax revenue¹³⁸ thus allowing municipalities to adjust property taxes for low-income individuals downward without depleting the school district's funding.

The Vermont Legislature crafted the Act in response to the Vermont Supreme Court's holding in *Brigham v. State*,¹³⁹ which interpreted the Vermont Constitution as requiring that students in the state receive equal access to education revenues.¹⁴⁰ Indeed, the Constitution reads, "Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth."¹⁴¹

The court's opinion in *Brigham* recognized that Vermont school districts derive funding from two sources: funds raised from property taxes levied by cities or towns "and funds distributed by the state."¹⁴² It identified as a problem the fact that the state only supplements funding to the extent that it enables districts to provide "a minimally adequate education program."¹⁴³ As a result of this structure, only wealthier districts can generate the property tax revenue necessary to provide enough funding for each student to receive a constitutionally minimally adequate education.¹⁴⁴ The court reasoned that wide disparities in student expenditures "correlate generally with taxable property wealth within" each school district in the state¹⁴⁵ and ultimately urged the legislature to remedy these disparities via legislative reform.¹⁴⁶

The basic contours of the resultant Act operate as follows. Part I calls for equal education for all students.¹⁴⁷ Specifically, it develops plans to promote public school quality, prepare and professionally develop educators, and coordinate budgeting across programs that already contribute to school revenue such as the Department of Education and the Agency of Human

138. VT. STAT. ANN. tit. 16, §§ 2948(c), 2961, 4011 (2004).

139. 692 A.2d 384 (Vt. 1997).

140. *Id.* at 386; *see also* Equal Educational Opportunity Act of 1997 § 165, 1997 Vt. Acts & Resolves 279, 287–89 (codified as amended at VT. STAT. ANN. tit. 16, §§ 4000–03, 4010–16, 4025–29 (2004)) (instructing the State Board of Education to develop funding mechanisms that respond to the Supreme Court's holding in *Brigham*).

141. VT. CONST. ch. II, § 68.

142. *Brigham*, 692 A.2d at 387–88.

143. *Id.* at 388.

144. *See id.* at 389–90 (holding that the funding system's reliance on local property taxes violated the state's constitutional guarantee of equal educational opportunities).

145. *Id.* at 389.

146. *Id.* at 386.

147. VT. STAT. ANN. tit. 16, § 1 (2004).

Services.¹⁴⁸ Parts II through XIII address funding. These sections discuss basic education funding and emphasize that state block grants will be provided to equalize school districts' capacity to provide the same amount per pupil regardless of the local tax base.¹⁴⁹ More specifically, the Act creates general state support grants for each equalized pupil¹⁵⁰ and mandates annual disclosure of the local share property tax percentage the district intends to collect if education spending exceeds the state's grant.¹⁵¹

Despite the residual reliance on property taxes this Act requires, it still preserves funding for every pupil without levying unaffordable property taxes on low-income families. Indeed, Part VII of the Act awards a property tax credit to claimants whose annual household income does not exceed \$47,000.00.¹⁵² The credit equals the amount of taxes paid in excess of a graduated percentage of household income.¹⁵³ As mentioned above, the income brackets usually correspond with income restrictions CLTs impose on their lessees,¹⁵⁴ which means that these tax credits apply to most CLT homeowners. The chart below illustrates the income brackets that receive a tax credit and the percentage of household income a claimant in each bracket must pay before receiving a tax credit for the taxes that exceed that amount.

Threshold Percentage of Tax Credit by Household Income¹⁵⁵

Household Income	Credit for Property Tax Paid in Excess of This Percent of Household Income
\$0–\$9,999.99	2
\$10,000.00–\$24,999.99	4.5
\$25,000.00–\$47,000.00	5

Municipalities in Vermont have responded favorably to the Act. In 2009, Springfield, Vermont, issued a town plan that lauds the Act's role in "benefit[ing] the Springfield School District by providing a source of funding beyond the local property tax."¹⁵⁶

148. *See id.* tit. 16, § 165 (listing standards of quality for public schools that include annual action plans to improve student performance by providing professional development); 1997 Vt. Acts & Resolves 279, 285–86 (promoting unified budgeting).

149. VT. STAT. ANN. tit. 16, §§ 2948, 2961, 4000, 4011, 4027 (2004 & Supp. 2011); *id.* tit. 32, § 5402 (Supp. 2011).

150. *Id.* tit. 16, § 4011 (Supp. 2011).

151. Equal Educational Opportunity Act of 1997 § 4027, 1997 Vt. Acts & Resolves 279, 294–95. This provision was enacted into law but later repealed. VT. STAT. ANN. tit. 16, § 4027(a) (2003) (repealed 2004).

152. VT. STAT. ANN. tit. 32, § 6066 (2008).

153. *Id.*

154. *See supra* note 134 and accompanying text.

155. VT. STAT. ANN. tit. 32, § 6066 (2008).

156. SPRINGFIELD PLANNING COMM'N, SPRINGFIELD TOWN PLAN 36 (2009).

Despite this acknowledged benefit, however, Springfield's plan also highlights the strain the municipality faces. A study conducted by Applied Economic Research of Laconia, New Hampshire, and cited in the Springfield plan indicates that Springfield's comparatively weak manufacturing market causes the area to lose residents to "more prosperous areas in Vermont and New Hampshire."¹⁵⁷ Since the town receives a specific amount of revenue for every student attending Springfield schools pursuant to the Act, the town's declining population (and by extension, declining school enrollment) means that the school expects to "see less funding for maintenance and improvements."¹⁵⁸ In response to this anticipated problem, the Springfield plan ultimately calls for "[e]nsur[ing] that new housing projects pay their fair share of property taxes" and, until a "fair share housing study" can be conducted, hold off on building all assisted housing units.¹⁵⁹ This final recommendation suggests that requiring uniform funding for every student in the state of Vermont places enough financial strain on Springfield to dissuade the city from engaging in affordable housing initiatives that cannot contribute their fair share to the tax base.

IV. Model Proposal

In light of the benefits and drawbacks of the above approaches, this Part advocates for a model CLT taxation code that strikes a better balance between maintaining affordability and contributing to the improvement of property tax-funded municipal services. The unpredictability of local assessing tendencies in the absence of state legislative oversight indicates that a comprehensive state law is preferable to a locality-by-locality approach.¹⁶⁰ Indeed, a statewide approach can provide for the establishment of a uniform formula for CLT property tax rates that will allow the state to know ahead of time the revenue that a given municipality will generate and thus the supplementary funding (in the form of state block grants) municipalities will require to compensate for the tax breaks they give to CLT land. The proposal that follows, therefore, draws upon a combination of the approaches taken by Vermont and North Carolina. It advocates for a specific formula for determining the assessed value of CLT property while also providing state block grants to ensure that the equality and adequacy of funding for each public school student does not depend entirely upon municipal property tax revenue.

157. *Id.* at 28.

158. *Id.* at 36.

159. *Id.* at 30–31.

160. *See supra* section III(A)(3).

A. *Create a State Budget for Block Grants Ensuring Equality of Basic Education Funding for Every Public School Student*

States should create grants that supplement local property tax revenue and aim to equalize funding for every public school student in the state no matter the wealth of the student's school district. Under Part VIII of the Vermont statute, the state appropriated \$750,000 annually as a state grant in lieu of property taxes.¹⁶¹ The state amasses the revenue to cover this appropriation via state taxation such as a corporate income tax,¹⁶² bank franchise taxes,¹⁶³ a telecommunications service charge,¹⁶⁴ meals and room tax,¹⁶⁵ gasoline tax,¹⁶⁶ and sales tax.¹⁶⁷ The limited revenue Vermont can generate through these taxing mechanisms imposes an obvious cap on the effectiveness of this approach. Indeed, as the Springfield, Vermont, Town Plan recognizes, this funding allotment cannot eliminate the need for property tax-based school funding entirely.¹⁶⁸

Despite these limitations, however, establishing a grant program would lessen a school district's reliance on property tax revenue (indeed, municipalities could rely at least in part on state block grants rather than property tax revenue to fund their public education systems) and consequently afford the local taxing entity the ability to adjust the assessed value of CLT property downward. As mentioned above, Springfield has voiced its appreciation for the relief the grant program has provided from its overreliance on property taxes to fund its schools.¹⁶⁹ Springfield also noted that it would benefit more from the grant program if it could improve the quality of life in its community, which would attract additional residents and consequently additional state grant money.¹⁷⁰ The limitations in funding a state block grant can provide, therefore, should not stop states from adopting this approach as a partial solution to localities resisting CLTs because of the impact those CLTs will have on their property tax revenue.

161. See VT. STAT. ANN. tit. 32, § 3702 (2008) (providing that "[t]he secretary of administration shall determine annually the amount of payment due, as a state grant in lieu of property taxes, to each municipality in the state in which is located any state-owned property"); see also *id.* tit. 32, § 3703(c) (adding that "[t]he total of any grants under subsection (a) of this section for buildings owned by the University of Vermont and State Agricultural College shall be limited to a maximum of \$750,000.00").

162. *Id.* § 5832.

163. *Id.* § 5836.

164. *Id.* § 9771.

165. *Id.* §§ 9241, 9242.

166. *Id.* tit. 23, § 3106 (2007).

167. *Id.* tit. 32, §§ 8903, 9771–73 (Supp. 2011); *id.* § 9774 (2008).

168. See *supra* notes 156–59 and accompanying text.

169. See *supra* note 156 and accompanying text.

170. See SPRINGFIELD PLANNING COMM'N, *supra* note 156, at 27, 32 (emphasizing the need to address issues other than housing in order to keep people with moderate to higher incomes in town and recognizing the connection between a higher school-aged population and state grant money).

B. Institute a Property Valuation Scheme for CLT Land That Takes the Restrictions Imposed by the CLT Arrangement into Account

In addition to adopting a state block grant program akin to that of Vermont's, states should also impose a specific CLT property-valuation scheme like that of North Carolina. As noted above, North Carolina projected that its special CLT property valuation scheme would only take \$3,593.02 away from the Carborro–Chapel Hill School District annually.¹⁷¹ The scheme would therefore lessen the burden of property taxes on CLT lessees while still accumulating some revenue from these properties to benefit the school district. As explained above, the North Carolina Legislature knew exactly how many CLTs were present in the state when they considered the bill, and the legislature was able to calculate the exact amount of revenue municipalities would forgo if they provided CLT land with the proposed tax break.¹⁷² The state block grants should help supplement the slight deficit in property tax revenue created by adjusting the assessed value of CLT property to account for the restrictions CLTs place on the property. By combining Vermont's block grants with North Carolina's modified property tax formula for CLT land, therefore, states could follow North Carolina in compiling a list of all the CLT properties in each municipality, calculate ahead of time how much revenue municipalities would forgo by creating a special tax rate for such properties, and create a block grant, as Vermont does, equal to the amount of the projected loss. Since the amount of the block grant would be necessarily limited by the amount of revenue the state can generate via other methods of taxation—corporate income tax, bank franchise tax, telecommunications service charge, meals and room tax, gasoline tax, and sales tax in Vermont's case¹⁷³—the state should lower the statutory tax rate municipalities impose on CLT land only to the extent that it can afford to provide municipalities with the difference in revenue via its block grant. Ultimately, this modified valuation scheme will impact municipal revenue less drastically than a complete exemption would, which, as the study accompanying the Texas statute creating a complete exemption stated, will help localities afford to approve more CLT properties within their borders.¹⁷⁴

C. Capture the Revenue Generated by Sustained School Excellence and Community Improvement

It is important to keep in mind that CLTs often either work to revitalize and improve the communities in which they locate or buy land in communities that are experiencing gentrification already. As mentioned

171. See *supra* note 129 and accompanying text.

172. See *supra* notes 124–31 and accompanying text.

173. See *supra* notes 162–69 and accompanying text.

174. See *supra* note 110 and accompanying text.

earlier in the Note, the Guadalupe Neighborhood Development Corporation buys land in East Austin where property values rose 100% from 2000 to 2005¹⁷⁵ and the Sawmill Community Land Trust buys land in Albuquerque where property taxes tripled from 1995 to 2000.¹⁷⁶ If CLTs achieve their goal of revitalizing downtrodden areas, the property values will likely increase and the positive aspects of gentrification—namely increased municipal revenue¹⁷⁷—will outweigh the small impact the relatively few CLT properties in a community have on overall property tax revenue.

V. Conclusion

States need to impose lower tax rates on CLT land in order to facilitate the CLT mission of preserving permanent affordability for homeowners even as their community improves and gentrifies. At the same time, states must be mindful that property taxes help municipalities fund education, and that municipalities cannot afford to lower taxes on CLT land if doing so will adversely affect their already-depleted public education budget. Hopefully, by instituting state block grants and statewide CLT property-valuation schemes, states will foster a continued CLT presence that will achieve the CLT mission of sustained affordability and community revitalization for years to come.

—Alese Bagdol

175. *See supra* note 62 and accompanying text.

176. *See supra* note 57 and accompanying text.

177. *See supra* note 53 and accompanying text.