

ON COMMON GROUND

INTERNATIONAL PERSPECTIVES ON
THE COMMUNITY LAND TRUST



John Emmeus Davis, Line Algoed,
María E. Hernández-Torrales

EDITORS

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3.

Common Ground

Community-Owned Land as a Platform for Equitable and Sustainable Development¹



John Emmeus Davis

Land, labor, and capital have long been considered the primary factors of production, regardless of whether one is planning for the fabrication of durable goods in an industrial plant or for the revitalization of dilapidated homes in a residential neighborhood. Every analysis of a project's feasibility begins here. Much creative thought is devoted to these essential inputs, weighing how best to tweak their design, to reduce their cost, and to increase their effectiveness. Creativity of this sort is especially important in community development, where the production of goods and services for people of limited means must be heavily subsidized out of public coffers and private contributions. Every dollar must be inventively stretched and cleverly invested for maximum effect.

Land has been the glaring exception to this predilection for innovation. Experimentation has been the norm in community development when it comes to finding new ways to improve infrastructure, to incubate enterprises, to finance homeownership, or to train low-skilled workers. Far less ingenuity has gone into designing new ways of owning, controlling, and utilizing land to make distressed places more livable or to make prosperous places more inclusive.

This pattern has persisted despite the presence of an innovative model of community-led development on community-owned land that has spread steadily across the United States and is now becoming rooted in other countries as well. Known as the community land trust (CLT), this unconventional approach to place-based development has three distinguishing features: (1) a private, nonprofit organization, acting on behalf of a geographically defined community, acquires and retains scattered parcels of land that are put to a variety of uses through long-term ground leasing; (2) residential or nonresidential buildings located on these leaseholds are sold off to individual owners — families,

cooperatives, farmers, small businesses, etc. — whose ownership interest is encumbered by long-lasting affordability controls over each building's use and resale; and (3) the non-profit landowner is guided in the development and stewardship of lands and buildings under its care by people who use its land, occupy its housing, or reside within the surrounding community.

A shorthand description of this strategy, pursued by CLTs and other nongovernmental organizations operating in a similar fashion, is *community-led development of permanently affordable housing (and other assets) on community-owned land*. Or, shorter still, *common ground*.

Any sort of building can be raised on a foundation of community-owned land, although CLTs have devoted most of their resources to date to the production and preservation of housing. On leased land, CLTs have developed many types and tenures of renter-occupied and owner-occupied housing, all priced within the financial reach of persons of limited means. The particular forte of community land trusts is not development, however, but *stewardship*: taking care of this housing long after it is created. CLTs have been effective in preventing the disappearance of affordability when real estate markets are hot and have been equally effective in preventing the erosion of owner equity, the neglect of necessary repairs, and the loss of homes to foreclosure when markets turn cold.

Despite the documented success of CLTs in making such “counter-cyclical stewardship” a reality, many nonprofit organizations in the United States have been slow to incorporate common ground into their programs.² The simplest explanation for their hesitancy is that doing development on community-owned land is hard work, especially when a community's residents are given a say in deciding how land should be used and developed. Most nonprofit housing developers choose an easier path. They sell off local lands. They shut out local voices. They roll out affordably priced housing that looks familiar to public funders and private lenders, while minimizing their own responsibility for preserving the affordability, quality, and security of those homes after they are built.

This essay argues that common ground is worth the extra effort. It is a strategy for redistribution, putting property and power into the hands of people deprived of both. It is also a bulwark against loss, protecting hard-won gains in ownership and empowerment from leaking away over time. For *impoverished* neighborhoods needing revitalization, CLTs allow investment to occur and development to proceed without the wholesale displacement of lower-income households, low-profit enterprises, and beloved spaces that populated an area before it began to improve. For *prosperous* neighborhoods lacking economic and racial diversity, CLTs allow housing to be produced for lower-income people that will remain affordable forever. On the platform of common ground, equitable development and sustainable development become two sides of the same coin. Places are made more just. Justice is made to last.

I. REDISTRIBUTION: THE PURSUIT OF EQUITABLE DEVELOPMENT

Every investigation into whether place-based development is *equitable* begins with a question that city planners ask less frequently than they should: *Cui bono*, who benefits? Equally relevant is the converse: Who's harmed? When new investment is brought into a neighborhood, when new housing is built, when social conditions improve and land

Common ground tips the scales in favor of people who have been excluded from the benefits of land-based wealth and who have lacked the power to shape development.

values rise, the lion's share of the benefits will go either to people in need or to people who already possess an abundance of property and power. Similarly, the burdens of development will either be apportioned fairly or fall disproportionately upon the shoulders of people who are least able to bear them.

Strategies and outcomes of place-based development are always to be found somewhere along the contested continuum between these poles. Either they tilt toward *redistribution*, challenging the existing landscape of inequality, or they tilt toward *reinforcement*, etching patterns of privilege more deeply into the social structure of place. Common ground does the former. It tips the scales in favor of people who have been excluded from the benefits of land-based wealth and who have lacked the power to shape development within their own neighborhoods, be those places urban, suburban, or rural.

A. Street Level Land Reform: The Economic Case for Common Ground

The community land trust is a hybrid of three strategies used around the world to redistribute landed resources to achieve a more equitable allocation of income and wealth. In their commitment to community-owned land, CLTs are part of a *collective tradition* of land reform in which private estates or public lands are transferred intact to collectives, cooperatives, or village trusts.³ In their commitment to expanding individual access to lands and buildings, CLTs are inheritors of a *distributionist tradition* in which concentrated landholdings are broken into smaller homesteads and put into the hands of families, farmers, and entrepreneurs. In its commitment to the fair allocation of appreciating real estate values, CLTs are part of a long tradition of *value recapture* that can be traced from the "social increment" of John Stuart Mill, through the Single Tax crusade of Henry George, to the Garden Cities of Ebenezer Howard.⁴

CLTs are unique not only in combining these three traditions of land reform, but in doing so at a different *level* than attempted in the past. Most land reform schemes have

been targeted to an entire country. By contrast, community land trusts are tailored to fit the geography and circumstances of place-based communities as small as a single neighborhood, city, or county. Even when a CLT carves out a much larger geography, the economic benefits of common ground are realized at the micro-level of neighborhood and household.

Common ground is a versatile foundation on which any type of building can be constructed and on which any use of land can be secured. Although most CLT activity has centered on expanding access to affordable housing, the lands owned by CLTs have also been used in the development of community centers, day care centers, office space for other NGOs, and commercial buildings for neighborhood retail. Community-owned land has been leased out for community gardens, greenhouses, and commercial farming. In more rural areas, CLTs have been used to preserve access to productive lands for small farmers.

Although some CLTs are heavily involved in developing rental housing, homeownership has been the priority of most community land trusts in the United States. By boosting lower-income people into homeownership, either in houses, townhouses, condominiums, or cooperatives, CLTs put these households on a path toward stabilizing their finances and, over time, toward increasing their personal wealth.

CLTs are hardly alone in using public subsidies and private donations to make homeownership more widely available. There are two significant advantages, however, that community-owned land and long-term ground leasing bring to the whole business of building economic prosperity for low-income people when helping them to buy a home.

First, common ground is an effective shield against financial shocks that can strip low-income people of the prosperity they thought was theirs when purchasing a home. A painful lesson of the Great Recession was that personal wealth, when embedded in residential real estate, is less secure than commonly assumed. Homeowners only build wealth if they can hang onto their homes, which many could not when the Recession hit and the mortgage market collapsed. Between 2007 and 2012, 12.5 million market-rate, owner-occupied homes went into foreclosure in the United States. Communities of color bore the brunt of it, due in large measure to the higher incidence of homes that had been mortgaged using high-priced, variable-rate subprime loans.⁵

The owners of resale-restricted homes developed by CLTs fared much better, experiencing rates of default and foreclosure during the worst of the Great Recession that were a tenth of the rate experienced by the owners of market-rate homes.⁶ What the former had that the latter did not was a partner that stood protectively between them and their lenders. At the front end of the lending process, the CLT was by their side, reviewing and approving proposed mortgages and preventing predatory lending. Later on, the CLT was prepared to act on their behalf, should the owners of resale-restricted homes get behind in their payments, intervening to halt foreclosure and to prevent the loss of household wealth. The CLT's stewardship regime was not only effective in preserving affordability

for the *next* generation of homebuyers, therefore; it also proved effective in preserving the equity invested and earned by the *current* generation of homeowners.

Community land trusts have also shown themselves to be unusually effective at capturing and distributing land-based wealth inter-generationally. They do so by preventing the removal of public and private subsidies invested in the privately-owned housing on their lands. Subsidies that are retained in CLT homes (along with much of a home's appreciation) reduce the price for subsequent buyers, in effect sharing land-based wealth between one generation of homeowners and another. This feat of redistribution, achieved through a pricing formula and preemptive option embedded in the ground lease, puts the CLT squarely within the land reform tradition of value recapture pioneered by Henry George and Ebenezer Howard, while adding a street-level focus contemplated by neither.

B. Empowerment of Community: The Political Case for Common Ground

A particular strength of community-owned land is the opportunity provided to a place-based community to impose its will on *what* is developed and *how* development is done, making collective decisions about the common good. As Harry Smith has said about the CLT created by the Dudley Street Neighborhood Initiative in Boston, "The land trust doesn't exist just to acquire and manage land. It's really about engaging community to decide together what they want on their land."⁷

Land that is *community-owned* provides a foundation for development that is *community-led*. This is more than simply opening up a developer's planning process to community participation, inviting residents to voice opinions about the kind of improvements needed to make their neighborhood nicer, safer, or more affordable. A nonprofit organization that owns and manages leaseholds has a head start on creating a place-based constituency that is capable of defending and advancing the interests of everyone who calls that neighborhood their home.

1. Sharing Power

Among the myriad NGOs doing community development in the United States, there has been a notable decline in the number that incorporate participatory strategies and structures into their organizations and operations. Too many have drifted away from what used to be an article of faith among nonprofits dedicated to housing low-income people or to revitalizing low-income neighborhoods; namely, a core belief that the beneficiaries of an organization's projects and services should have a voice in planning those activities and in guiding and governing the organization that carries them out.

A philosophical commitment to democratic governance may help to arrest that slide, although that is hardly unique to CLTs. What *is* unique to a CLT is the practical necessity of anticipating and managing the risk of leaseholder discontent. Landowner-leaseholder relations are not always smooth. Indeed, they can become downright bumpy, an ever-

present possibility in the dual-ownership intricacies and intimacies of ground leasing. A desire to reduce the severity of these clashes and to protect its own reputation in the larger community can be strong incentives for a nonprofit landowner to create a structure and culture for leaseholder engagement. The easiest way for a nonprofit organization to ensure that its beneficiaries are cheerleaders rather than critics is to make them partners in guiding and governing the organization itself.

Cost is a factor in this calculation. The least expensive stewardship regime is one in which compliance is routine and enforcement is unnecessary, one in which the occupants of price-restricted buildings police themselves, voluntarily abiding by the contractual conditions that encumber their homes. Compliance with these restrictions is more likely when the people whose homes are encumbered are given a voice in directing the activities of the organization that is managing the land beneath their feet and overseeing the buildings in which they live.

2. *Building Power*

A nonprofit that is holding land on behalf of a place-based community and doing ground leasing cannot confine its activities to being a developer; it must be an educator and organizer as well. That is not only because its leaseholders may sometimes insist on their

Land that is community-owned provides a foundation for development that is community-led.

“landlord” entering the fray on their behalf, but also because the difficulties that accompany this unconventional form of tenure make it necessary for a nonprofit lessor to build awareness and

acceptance at the same time it is building housing. The very things that make ground leasing harder to implement and to manage tend to force any nonprofit doing ground leasing to behave (at times) like a community organizer and to use (on occasion) whatever power it has accumulated to defend the interests of its leaseholders, its community, and itself.

Building power for a CLT begins with the “captive audience” of the organization’s own leaseholders. As Jesse Myerson has observed, “Land removed from the private market, decommodified and placed under the ownership and management of the people who live there, is land that creates and renews its own political constituency.”⁸ This constituency is helped to grow by the versatility of ground leasing, where anything can be developed on community-owned land. When a nonprofit organization takes full advantage of this versatility, shopkeepers, service providers, and community gardeners are added to the ranks of residential leaseholders, broadening the base of a CLT’s support.

C. Development with Justice:

The Preservationist Case for Common Ground

Most place-based development is aimed at aggressively rebuilding impoverished localities in which an absence of investment has caused conditions inimical to surviving and

thriving for all residents. But place-based development may also be aimed at *prosperous* localities, where an abundance of investment (combined, perhaps, with a pernicious dose of discriminatory zoning) has elevated land values and left little room for housing that is affordable, effectively excluding the poor and people of color. Equitable development is not only about lifting up the worst places; it is also about opening up the best places.

In both situations, the special dilemma for practitioners committed to producing equitable outcomes is how to protect redistributive gains that are achieved in the present against their steady erosion by market forces in the future; even more, how to avoid inadvertently accelerating that process by a practitioner's own success in turning a neighborhood around. The preservationist case for common ground addresses this dilemma head-on, arguing that common ground can provide a foundation for equitable development *and* sustainable development, enabling the implementation of both.

1. Do No Harm

Public agencies, private foundations, and community development organizations of every stripe too rarely *plan for success* when endeavoring to improve distressed neighborhoods. They seem unable to imagine a day when their own efforts might cause property values to rise and market pressures to mount, threatening the wellbeing of the disadvantaged population they set out to help. Focused so intently on doing something good for places urgently in need, these well-meaning interventionists provide no protection against the possibility of something bad happening down the road.

Planning for success when *equitable* development is the goal begins by honestly acknowledging the pain that place-based development often inflicts on economically precarious people and accepting responsibility for doing something to prevent it. By that light, any funder or practitioner who intervenes in a low-income neighborhood with the intention of bettering the lives of those residing there should approach such places with a caution and humility akin to that embodied in the Hippocratic Oath: "Take care that they suffer no hurt or damage."

One of the surest ways of "taking care" is for a community to "Take a Stand, Own the Land," as the organizing slogan of the Dudley Street Neighborhood Initiative (DSNI) once put it. In the 1970s, residents of the Boston neighborhood of Roxbury welcomed the prospect that transit-oriented development might attract investment into an area that had experienced decades of redlining, abandonment, and arson for profit. But they also worried that rising rents and prices might follow in its wake, displacing families with limited incomes. The solution championed by DSNI was to begin acquiring a significant percentage of the neighborhood's land *before* it was caught up in market forces that the government's investment in infrastructure would unleash. A community land trust subsidiary named Dudley Neighbors Inc. (DNI) was established by DSNI in 1988 to hold that land, while also preserving the affordability of any rental housing, cooperative housing, and owner-occupied houses, duplexes, and triplexes constructed on its land.⁹

A similar strategy has been pursued in the Tenderloin neighborhood of San Francisco, where a long-standing partnership between municipal agencies and nonprofit providers of affordable housing has resulted in a steady stream of land being moved into social ownership over the span of many years:

Starting in the 1970s and continuing uninterrupted over the decades since, Tenderloin activists, working with city government and a set of strong nonprofit partners, bought or otherwise obtained control over a significant share of the area's real estate. . . . It's a 'win-win' strategy that could be dismissed as wishful thinking in any other contested neighborhood. But in the Tenderloin, community control of land makes it possible for community leaders to risk improving the neighborhood without worrying that new investment will push out all the low income people. . . . In fact, this strategy of steady land acquisition and permanent affordability controls is probably the only approach to combating gentrification that can actually win.¹⁰

Community-owned land cannot prevent market forces from buffeting a neighborhood, any more than an umbrella can stop the rain. It cannot prevent affluent people from moving into a low-income area that is newly attractive to homebuyers and entrepreneurs who, sensing a change in the area's fortunes, are now willing to settle their families or businesses there. What community-owned land *can* do is to keep the poor from getting drowned in the deluge. It is a bulwark against displacement, protecting clusters of affordably priced housing that funders and practitioners have worked so hard to create; preventing endangered islands of security and opportunity from being washed away.

Affordable housing is not the only "lower" land use that is threatened when neighborhoods improve. The same is true for many nonresidential land uses that serve and employ people of modest means. Here, too, common ground can be a bulwark against displacement. A community-based organization that holds land under a variety of buildings and leases out land for a variety of purposes can prevent the loss of small manufacturers, retail establishments, artist spaces, community facilities, and open lands that are put under pressure whenever real estate values rapidly rise. It can also preserve cooperatively owned enterprises that may be tempted to "demutualize" when the enterprise thrives.¹¹

Especially vulnerable in neighborhoods undergoing rapid improvement are the sites that Ray Oldenburg has called "third places."¹² These are informal, celebratory spaces in which neighboring occurs and community happens. Often, the most endangered of these spaces in neighborhoods having large concentrations of lower-income people are community gardens. When a neighborhood is economically depressed, the supply of land for community gardens is often cheap and plentiful. When the neighborhood rebounds and land values rise, sometimes as a result of public investment or as a result of residents cleaning up vacant lots and planting verdant gardens, third spaces devoted to urban agriculture are among the first to go.¹³

In places where the economic tide has turned, common ground can bend the arc of prosperity toward justice.

In sum, common ground can serve as a durable protection for people, uses, and spaces that were tenaciously there long before a disadvantaged place began to improve. It can help to ensure that the *benefits* of development do not accrue primarily to the few who had the foresight and fortune to buy up a neighborhood's real estate when prices were depressed. It can help to ensure that the *burdens* of development do not fall disproportionately on individuals who are the least able to bear them. In places where the economic tide has turned, often as a direct or indirect result of the intervention of public funders, private foundations, and nonprofit developers, common ground can bend the arc of prosperity toward justice.

2. Make It Last

Conditions of surviving and thriving for persons of limited means are not only lacking in places of poverty, they are also lacking in many places of prosperity. The usual culprit in the latter is the scarcity of affordable housing. Low-income people may work in affluent neighborhoods, suburbs, and towns. They may shop there. But they often cannot live there, excluded by rents and prices far beyond their reach.¹⁴

Opening up privileged enclaves from which low-income families and people of color are regularly barred has been as much a focus of community land trusts in the United States as improving distressed neighborhoods in which underprivileged populations are concentrated. At present, there are even more CLTs working in areas where housing prices are robust than in places where housing prices are depressed. Despite the differences between strong-market cities and weak-market cities, there is often a similar lack of attention that is paid by policymakers to protecting whatever success they have had in improving conditions for people of limited means. Similar, too, is the preservationist role that CLTs have been asked to play.

Most affordably priced homes produced in affluent areas would not exist without the investment of public dollars from a federal, state, or city agency, without the imposition of municipal mandates like inclusionary zoning, or without the beneficence of density bonuses, parking waivers, tax abatements, land donations, infrastructure extensions, and other incentives. Governmental intervention and governmental largess are essential to making newly constructed housing "affordable," allowing homes to rent or to sell for below-market prices that are within the financial reach of people on the lower half of the income ladder.

In too many places, however, this heavily subsidized affordability is not designed to last very long. Restrictions (if any) are imposed on rents and resales that are allowed to lapse after five, fifteen, or thirty years. Prices may then rapidly rise to meet the market. Public subsidies get stuffed into private pockets. Low-income people get displaced. This

programmed loss of publicly assisted, privately owned housing has been a dominant feature of most housing policy in the United States, at all levels of government, for decades.¹⁵

Calm acceptance of the planned attrition of subsidized housing was shaken by the affordability crisis of the 1980s and 1990s and by the foreclosure crisis of the Great Recession in 2007–2009. These disruptions caused a grudging shift in the tectonic plates of American housing policy. At the municipal level, in particular, increased attention began to be paid to preventing the loss of publicly subsidized housing, whether to market pricing, deferred maintenance, or foreclosure.¹⁶ That was especially true in stronger markets where regulatory measures like inclusionary zoning were being used to bring this housing into being. The disappointing performance of many of the earliest cities that adopted inclusionary housing programs, where thousands of affordably priced homes were lost to the market because of short-term affordability controls, provided a corrective lesson for later adopters. Municipal officials began paying closer attention to preserving the affordability of inclusionary housing for a much longer period of time.¹⁷ Stewardship rose higher on the public agenda.

That has created an opportunity for CLTs to show they can do what conventional tenures and programs do not, since stewardship is what community land trusts do best. They stay in the picture long after affordably priced housing has been produced, making sure that it lasts. CLTs, in this regard, are the ultimate preservationists: acting to ensure the lasting affordability and continuing upkeep of privately owned homes, while helping to ensure the ongoing success of the homeowners or renters who occupy them. As Connie Chavez, the former executive director of the Sawmill Community Land Trust in Albuquerque, New Mexico was fond of saying, “We are the developer that doesn’t go away.”

II. RESILIENCY: THE PURSUIT OF SUSTAINABLE DEVELOPMENT

Community land trusts are not the only way to preserve the affordable housing that a local government or a private charity has helped to create. Other models and mechanisms are often tapped to play this stewardship role by government officials and housing professionals, who consider them equivalent to the CLT. From their perspective, it “doesn’t matter” which method is used as long as subsidies are retained, affordability is perpetuated, and homeowners (and renters) are helped to hang onto their homes.¹⁸

The assumption of equivalency may actually be true, as long as nothing goes wrong. But stability can be hard to come by. The fortunes of low-income people, low-income neighborhoods, and the nonprofit organizations that serve them are constantly in flux and unavoidably precarious. Among the private developers of subsidized housing, for example, there may be shenanigans in trying to bypass affordability and eligibility restrictions that encumber their properties. Among the owners of resale-restricted homes, there may be delays in doing repairs or delinquencies in paying their mortgages. Among

Place-based development is equitable only if it can be sustained. It is worth sustaining only if it is equitable.

organizations charged with stewardship, there may be lapses in intervening when housing is at risk. There may be flaws in the organizations themselves, moreover, leading to a failure to thrive — or a failure to fulfill their stewardship responsibilities.

If affordable housing is to be preserved, the contractual and organizational system put in place to make it last must be able to withstand such challenges. It must be able to cope with occasions when people and organizations do not behave as they should. It must not only plan for success; it must also plan for failure. In a word, that system of stewardship must be *resilient*.

Just as equitable development revolves around the question of “who benefits,” sustainable development hinges on the question of “how long” — with *forever* being the end to which practitioners aspire. These are overlapping concerns: making it fair and making it last go hand in hand. Place-based development is equitable only if it can be sustained. It is *worth* sustaining only if it is equitable.

Sustainability, for purposes of the present discussion, is couched narrowly in terms of preserving affordable housing and other facilities, spaces, and activities made available for people of limited means, rather than in terms of conserving the natural resources of a limited planet — the more familiar meaning of “sustainable development.”¹⁹ Narrowing the discussion further still, our focus is on the preservation of resale-restricted, owner-occupied homes on land belonging to a CLT. This provides something of a test case, showing how the model can perform in challenging circumstances. If the affordability, quality, and security of *owner-occupied* homes are likely to last when homes are sited on a CLT’s land, then *other* types and tenures of housing should be sustainable as well.

My argument is this: When it comes to sustainability, preserving affordably priced homeownership in the face of market pressures and changing conditions, common ground is not “equivalent” to other models and mechanisms. It is better. There are advantages to be found in the long-term leasing of community-owned land that cannot be matched by other approaches to stewardship. These advantages allow a CLT to continue doing good even when things go bad.

A. Dependable Intervention: The Operational Case for Common Ground

Operationally, CLTs are in a league of their own when assigned responsibility for watching over homes entrusted into their care. By owning the land beneath resale-restricted housing, CLTs are more likely to know when their homeowners are having problems. CLTs are more likely to prevail in negotiations with private lenders to prevent these problems from leading to the loss of lands and buildings from the organization’s portfolio. CLTs are more likely to intervene when problems arise.

1. *Intelligence*

One of the keys to effective stewardship is learning about difficulties long before they become too serious to solve and too costly to fix. A particular advantage of community-owned land is that ground leasing contains a formal and informal “early warning system” that other programs for boosting low-income households into homeownership do not.

The *formal* components of this system are: (1) the collection of ground lease fees from homeowners; and (2) the notification from lenders of any mortgage delinquencies. The revenues raised from lease fees are useful in covering a portion of the steward’s operating costs, but they serve another function as well. They give the CLT’s staff a regular glimpse into how the organization’s leaseholders are faring. The first thing the owners of buildings on leased land tend to stop paying, when experiencing financial distress, are the lease fees owed to the benevolent owner of the land beneath their feet. A pattern of late fee payments or mounting arrearages is usually an indication of more serious problems, alerting a CLT of the need to intervene.

Most CLTs selling homes on leased land have a second tripwire built into their system. They become a party to the mortgages on houses or condominiums. Lenders agree to notify the landowner if any homeowners become seriously delinquent in their payments. A lender may do the same when receiving an application to refinance a home on leased land. Such notifications alert the CLT to changes in a leaseholder’s financial circumstances that may jeopardize the homeowner’s ability to hang onto his or her home.

The *informal* components of a lessor’s early warning system are: (1) the continuing relationship between lessor and lessee; and (2) the continuing visibility of the landowner in the eyes of neighbors and city officials. The very structure of ground leasing requires the landowner and homeowners to stay in touch and, to some degree, to get along. If this relationship is a good one, homeowners are more likely to volunteer information about disruptions in their financial situations, giving the CLT an opportunity to help. This marriage of convenience is forged early in the process of preparing prospective homebuyers for life on the steward’s land. “During every community land trust homebuyer education class,” says Devika Goetschius, director of the CLT in Petaluma, California, “I’ve looked each person in the eye and told them, ‘When your financial circumstances change — good or bad — you call me.’” With admirable regularity, they do.²⁰

Admittedly, any organization that serves as the steward for resale-restricted, owner-occupied housing can establish a trusting relationship with those who are buying the organization’s homes. My argument is that such a bond is more likely to exist in programs where the steward owns the underlying land. That is partly a consequence of the landowner and homeowner being materially and psychologically tied together, but it is also a function of the CLT being constantly reminded of this relationship by parties looking on from outside. Neighbors are likely to complain to the landowner when homes are not kept in good repair or when lots become cluttered with junk cars. City officials are likely

to notify the landowner when there are violations of building or zoning codes, or when homeowners fail to pay special assessments or property taxes. Such pesky calls provide a CLT's staff with valuable on-the-ground intelligence of any looming problems in the CLT's portfolio of resale-restricted housing.

2. Leverage

Owning the underlying land gives a CLT a wider range of options in dealing with a homeowner who is not complying with provisions in her ground lease; for example, not occupying the home as her primary residence or not keeping the home in good repair. The landowner's ultimate leverage in compelling compliance is the threat of eviction from the leasehold, but ground leases also contain a graduated series of less-drastic warnings, penalties, arbitration, and opportunities for injunctive relief. Nearly all violations are corrected long before reaching the dire straits of a CLT acting to remove a homeowner from the land.

Equally important, ownership of the underlying land gives a community land trust greater leverage in negotiating with a private lender or public funder who holds a mortgage on a troubled home. What is mortgaged in most ground leasing programs — and what a lender is allowed to seize if a loan goes bad — is the building, *not* the land. This strengthens the CLT's hand, multiplying the possibilities for dealing with mortgage defaults and foreclosures. The lender may enlist the CLT's cooperation in negotiating a workout with the homeowner, keeping the mortgage in place while putting the homeowner on a schedule to resolve the delinquency. Or the CLT may accept a deed-in-lieu-of-foreclosure from the homeowner. Or the CLT may decide to buy back the house from the lender, following foreclosure.

In short, even when a home (or other building) slides toward foreclosure, and even should a foreclosure actually occur, the community land trust stays stubbornly in the picture.²¹ The landowner's presence, interests, and powers cannot be ignored.

3. Intervention

Any NGO that has agreed to serve as the long-term steward of resale-restricted housing is likely to reserve the right to intervene in order to preserve the homeownership opportunities it has worked so hard to create, regardless of whether such authority is granted through a ground lease, a deed covenant, or some other mechanism. But having the *right* to intervene is not the same as having the *will* to do so. In this regard, the long-term leasing of community-owned land comes out ahead.

It is not that the people who run CLTs are more virtuous or energetic than the leaders of other NGOs; rather, their *incentive* to intervene is greater when problems arise. When the homes for which the steward is responsible are located on land that the steward owns, it is harder for that organization to ignore its stewardship responsibilities. To put it bluntly, the steward is "stuck." Those buildings that are not being maintained? They are

Stewardship is more certain when the organization assigned responsibility for stewardship is not only vigilant but vested, ensnarled in a benevolent web of its own making.

on the steward's land. Those homes with taxes or mortgages in arrears? They are on the steward's land. And everybody knows it, especially any governmental agencies that may have granted or loaned money to the CLT to develop that housing.

In the face of the many *disincentives* to intervention, including the time required, the money involved, and the risk of antagonizing homeowners who would rather be left alone, stewards using mechanisms other than a ground lease are more likely to decide that the cost is simply too high to go to the extra trouble of rescuing a distressed property. Owning the land tends to nudge this calculation in the opposite direction, creating an incentive to act that outweighs the disinclination to do so. Ground leasing, in this regard, is what behavioral economists call a *commitment device*.²² It locks a CLT into living up to its own promises, raising the reputational cost of not intervening to protect the buildings upon its land. Stewardship is more certain when the organization assigned responsibility for stewardship is not only vigilant but vested, ensnarled in a benevolent web of its own making, compelled to do the right thing even when tempted to look the other way.

B. Graceful Failure: The Organizational Case for Common Ground

An under-appreciated function of common ground is that it tends to make organizational failure less likely and, should a CLT begin to founder, to render its distress or demise less disastrous. Common ground builds greater resiliency into a stewardship regime.

It might seem self-defeating to mention failure while extolling the virtues of community-owned land and long-term ground leasing, but the emphasis here is on what is known as “graceful failure.” This is a fault-tolerant principle lifted from the world of engineering and computer programming, where complex systems are designed to continue operating properly even when there is a failure in one of the components. Engineers do not set themselves the impossible goal of building a transportation network, an electrical grid, or a computer program that will never fail. They strive, instead, to create systems that are robust and resilient. Such a system, when subjected to extreme conditions, may bend, but it does not break. Should it crash, it does so with enough warning and backup so as to protect its most valuable components.

Graceful failure is designed into a housing delivery system whenever stewardship is added as a backup for low-cost homes and low-income households assisted with public or private dollars. A stewardship regime makes failure less likely. It also helps to ensure that when failures do occur, which cannot be entirely avoided when dealing with economically vulnerable people, structurally vulnerable assets, and a hopelessly convoluted

system for regulating, financing, and subsidizing affordable housing, these failures will not be catastrophic. When stewardship accompanies the deal, homes are more likely to last.

Earlier, it was argued that the *operational* effectiveness of a stewardship regime is enhanced by a steward's ownership of the land beneath residential buildings for which it is responsible. But what of the *organizational* effectiveness of the steward itself? If it is true that some organization must stay watchfully in the picture for many years for affordability, quality, and security to be preserved, then stewardship must necessarily depend on the viability of that organization. It must have the capacity to do the job and the ability to survive. The steward, too, must be designed to last.

One of the best ways to ensure that a CLT will be around for the long haul is to build a diverse portfolio of revenue-generating assets, thereby reducing the organization's dependency on outside funders. Ground leasing, in this regard, can contribute significantly to a steward's bottom line, depending on the magnitude of the organization's holdings. Ground lease fees collected from the owners of buildings on the steward's land can be used to cover a growing portion of the landowner's operating costs, especially those incurred in meeting its stewardship responsibilities. Furthermore, when that portfolio includes multi-unit rental housing on leased land, and perhaps commercial buildings as well, the operational revenue from lease fees can become substantial.

But many CLT's will never develop a sizable and diverse portfolio. Smaller CLTs will sometimes (not always) find it harder to survive. Even CLTs with substantial portfolios may be put in jeopardy by a failed project or by a loss in governmental support, caused by a sudden change in the political winds. What matters the most in these situations, whenever a CLT finds itself on shaky ground, is saving the affordable housing into which low-income people have poured their savings and dreams. In a time of crisis, a nonprofit landowner with a charitable mission must think first of the wellbeing of the homeowners (and renters) who live on its land. Its primary obligation is to them. The governing board of a shaky CLT must do whatever is necessary to protect its leaseholders, including perhaps the prudent decision to lease out some of its land for a "higher" use than housing — or even the painful decision to sell some of its land.

The board may be led in more extreme cases of organizational distress to look for a suitor; that is, another nonprofit organization that is willing to absorb the CLT through a corporate merger or one that is willing to accept the CLT's assets upon the latter's dissolution. A steward with land on its books, along with a guaranteed stream of revenue from future lease fees, brings a lucrative dowry to the search for a partner or successor. This can increase the odds of attracting and negotiating an attractive organizational match that will protect the homes on the CLT's land and perpetuate the stewardship regime surrounding them.

The key point, in these cases, is not only that landownership and ground leasing give the board of a faltering organization more options, but also more motivation to pursue them. Similar to a CLT's commitment to oversight and intervention, a lessor and its

lessees are married to one another in a mixed-ownership arrangement that is not easy to unwind. The difficulty of doing so can be a good thing in a time of crisis, forcing everyone to slow down, dig in, and work harder to solve the organization's problems. When there is more at stake, as there is when low-income households live on land that is owned by a CLT, the governing board will do almost anything to make things right, even to the point of sacrificing the organization itself through a merger or dissolution if that means saving its leaseholders' homes.

III. JUST PLACES: THE TRANSFORMATIVE POTENTIAL OF COMMON GROUND

Long ago, Andre Gorz, a social philosopher living in France, drew a distinction between ameliorative measures that buttress existing relations of property and power versus those that open tiny cracks in the structure of inequality, slowly accumulating over time to offer an ideological and political challenge to the status quo. He called the first "reformist reform" and the second "non-reformist reform."²³

Gorz's categories were later revived and provocatively applied by James Meehan in his examination of community land trusts in the United States, using the Dudley Street Neighborhood Initiative in Boston as his principal case. He concluded:

It is clear that CLTs, in their diverse character and situations, walk the fine dividing line between the two tendencies of reformist and non-reformist. In many cases, the CLT legal model has been used as a gimmick to keep low-income housing costs low (thus taking pressure off the state and the private sector). In others, they play a role in raising consciousness to the realities of power in regard to land, questioning speculative ownership of land, and enabling some degree of community control over the local land base.²⁴

Meehan captures well the tension between the pedestrian, day-to-day practice of CLTs and the loftier, transformative possibilities that may result from their work. CLTs are, in fact, an effective scheme for lowering housing costs, preserving affordability, promoting upkeep, and preventing foreclosures. This full-cycle commitment to cost reduction at the front end and dependable stewardship at the back end is a marked improvement over the build-and-bolt mentality embodied in most other programs for boosting low-income people into homeownership.

At the same time, a community land trust, like every other organization working to improve conditions and to expand opportunities for disadvantaged people, inadvertently reinforces the hold of dominant institutions. When CLTs expand access to mortgage capital for populations and places that have experienced redlining in the past, they contribute to the legitimization of a system of private finance that has been a source of woe for low-income communities, especially communities of color. When CLTs expand access

to homeownership for people who have been excluded from the private market, they affirm the individualization of property that has been a flashpoint in the politics of place, where interests of property drive a contentious wedge between owners and renters, and between haves and have-nots. Community land trusts, from this perspective, can be seen as a reformist tool for propping up the status quo, softening the edges of a harmful system that is left unchallenged and unchanged.

There is another way of looking at it, however, for the cumulative effect of community-led development on community-owned land may be to transform that system into something else. An ideology of possessive individualism, used by landlords and homeowners alike to justify their capture of all gains in value accruing to real property, is challenged by a CLT's dogged pursuit of a more equitable balance between the legitimate interests of individual residents and the legitimate interests of the community around them, secured through common ground.²⁵ The power of private lenders is moderated by the CLT's front-end right to approve all mortgages for buildings sited on its land, screening against predatory lending; it is also blunted by the CLT's back-end right to intervene in cases of mortgage default, preventing most foreclosures. The politics of place are modified by a nonprofit landowner that is drawn into sharing and wielding power on behalf of residents living on and around its land.

Admittedly this happens within the geographic confines of a rather limited territory, encompassing a service area as small as a single neighborhood for some CLTs. It also happens within the functional confines of a limited circle of institutions that determine how land-based wealth is distributed and how real estate is owned, regulated, and financed. Community-owned land may be a creative vehicle for non-reformist reform, but its territorial and institutional reach may not extend very far.²⁶

It may be argued, on the other hand, that any institution that offers a counter-narrative to practices and meanings that buttress inequality carries a seed of possibility for influencing a wider circle of places, institutions, and policies. When one community prudently plans for success by improving conditions in a particular place without displacing its most vulnerable residents, it raises the question of why *equitable* development isn't a priority of every neighborhood improvement plan. When community-led development on community-owned land creates a stock of housing that is permanently affordable in the face of market forces that pose a credible threat to all affordably priced housing, most of which would not exist without governmental funds or inclusionary mandates, it raises the question of why *sustainable* development is not a requisite of all housing policy.

A community land trust, from this perspective, represents what Ulrich Beck has called a "creative construction," a social innovation that not only transforms relations within its particular sphere of influence but brings pressure to bear on the intellectual and political systems that surround it, "besieging what exists with a provocative alternative."²⁷ In a similar vein, Erik Olin Wright has pointed to "community-controlled land trusts" as one of several strategies for achieving what he calls "interstitial transformations." These

are alternative institutions that “seek to build new forms of social empowerment in the niches and margins of capitalist society, often where they do not seem to pose any immediate threat to dominant classes and elites.”²⁸

It cannot be said that most people who are drawn to a CLT, whether as practitioners or beneficiaries, are motivated by the prospect of mounting some sort of ideological, institutional, or political challenge to the status quo. Most have little interest in “besieging”

“What we are really about is land reform, but we hide behind the tomatoes.”

anything. They may be blissfully unaware of the transformative potential of community-owned land beyond its immediate utility in helping low-income people to obtain and retain a home. Even those who passionately embrace the CLT

as a vehicle for moving toward a more just society may speak only in whispers about the radical proposition at the heart of the model they employ. As the sweet old lady confided to a colleague of mine several years ago, while talking proudly about the success of her own CLT in doing both urban agriculture and affordable housing on community-owned land, “What we are really about is land reform, but we hide behind the tomatoes.”

Such reticence is understandable. A community land trust must think twice about calling too much attention to unconventional (and sometimes controversial) elements in its make-up when its leaders must continually beg for grants from public funders, apply for loans from private lenders, and anticipate attacks from reactionary neighbors opposed to anything being built near their own backyards.

Stealth has a price, however. When an innovation like common ground is cautiously kept out the limelight, it is simultaneously kept off the stage, waiting forever in the wings. To move from the periphery to the mainstream, CLTs must be prepared to strut their stuff and prove their worth, confidently proclaiming that *their* way of doing community development is preferable to the way it is normally done. Hiding behind the tomatoes may help a fledgling CLT to get established or may enable a beleaguered CLT to survive, but it does little to demonstrate the comparative advantage of common ground. It hides the fact that community-led development on community-owned land is not “just as good” as more conventional strategies of place-based development. It is better.

It is better because community land trusts are, at heart, more than simply another gimmick for lowering the cost of housing and cultivating a new crop of homeowners. What they are “really about” is equitably and sustainably replanting the contested ground at the intersection of property, power, and place. That may not be something to which all CLT practitioners aspire. That may not be something of which all CLT practitioners speak. But whenever land is controlled by a community within the participatory framework of a CLT, the transformative potential is present to nudge the places where people reside toward greater security and opportunity for all. Common ground provides a versatile platform for promoting development with justice — and justice that lasts.

Notes

1. This chapter is an abbreviated version of an essay published by the *University of San Francisco Law Review* v. 15, no. 1 (2017).
2. An argument for strategies and policies that preserve affordable housing in good economic times and bad can be found in John Emmeus Davis, "Homes that Last: The Case for Counter-Cyclical Stewardship," *Shelterforce* (Winter 2008). Reprinted in J.E. Davis (ed.), *The Community Land Trust Reader* (Cambridge MA: The Lincoln Institute of Land Policy, 2010).
3. While this tradition inevitably invokes images of state confiscation of the estates of a purged aristocracy, there are less draconian examples. The Gramdan Movement in India relied on voluntary donations of land from wealthy landlords in the 1950s. The contemporary land reform movement in Scotland relies on state funds, raised largely through the national lottery, and a 2003 law enacted by the Parliament in Edinburgh that gave communities a first option to purchase the feudal estates on which those communities are sited.
4. An earlier attempt to situate the CLT within the context of different approaches to land reform can be found in John Emmeus Davis, "Reallocating Equity: A Land Trust Model of Land Reform," Pp. 209–232 in *Land Reform, American Style* (Totowa NJ: Rowman & Allanheld, 1984). Reprinted in J.E. Davis (ed.), *The Community Land Trust Reader* (Cambridge MA: The Lincoln Institute of Land Policy, 2010).
5. Evidence for the disparate impact of the mortgage crisis on communities of color can be found in Jacob S. Rugh & Douglas S. Massey, "Racial Segregation and the American Foreclosure Crisis," *American Sociological Review* 75, 2016: 629, 633; and Debbie Gruenstein Bocian, Wei Li, Carolina Reid, & Roberto G. Quercia, *Lost Ground: Disparities in Mortgage Lending and Foreclosures* (Center for Responsible Lending, 2011).
6. Emily Thaden, "Stable Homeownership in a Turbulent Economy: Delinquencies and Foreclosures Remain Low in Community Land Trusts," Working Paper (Cambridge MA: Lincoln Institute of Land Policy, 2011). See also John Emmeus Davis & Alice Stokes, *Lands in Trust, Homes That Last: A Performance Evaluation of the Champlain Housing Trust* (Burlington VT: Champlain Housing Trust, 2009).
7. Penn Loh, "How One Boston Neighborhood Stopped Gentrification in Its Tracks," *YES! Magazine* (January 28, 2015).
8. Jesse A. Myerson, "How to Get Rid of Your Landlord and Socialize American Housing, in Three Easy Steps," *The Nation* (December 8, 2015).

9. The story of DSNI is told by Peter Medoff and Holly Sklar, *Streets of Hope: The Fall and Rise of an Urban Neighborhood* (Boston MA: South End Press, 1994).
10. Rick Jacobus, "The Gentrification Vaccine," *Rooflines* (August 13, 2015).
11. A rise in the value and profitability of a cooperatively-owned enterprise can tempt the firm's shareholders to sell out to an outside buyer, removing the cooperative structure and reaping personal gains, a process known as "demutualization." Just as the leased land beneath a limited-equity housing cooperative can prevent its conversion to a market-rate cooperative or condominiums, a ground lease beneath a worker cooperative or consumer cooperative can give a CLT the ability to prevent demutualization.
12. Ray Oldenburg, *The Great Good Place* (Paragon House, 1989). Quoted at p. 14.
13. Jeffrey Yuen and Greg Rosenberg, "Hanging on to the Land," *Shelterforce* (February 11, 2013). Available at: http://www.shelterforce.org/article/3068/hanging_on_to_the_land/
14. To focus on the cost of housing, as I am doing here, is not to ignore the presence of other barriers to geographic mobility, past and present, including discriminatory lending and exclusionary zoning.
15. Jake Blumgart, "Have We Been Wasting Affordable Housing Money?" *Rooflines* (December 3, 2015). Available at: http://www.shelterforce.org/article/4322/have_we_been_wasting_affordable_housing_money/. See also: John Emmeus Davis, "Plugging the Leaky Bucket: It's About Time," *Rooflines* (January 27, 2015). Available at: <https://shelterforce.org/2015/01/23/plugging-the-leaky-bucket-its-about-time/>
16. John Emmeus Davis and Rick Jacobus, *The City-CLT Partnership: Municipal Support for Community Land Trusts* (Cambridge MA: Lincoln Institute of Land Policy, 2008).
17. "The overwhelming trend has been for inclusionary housing programs to adopt very long-term affordability periods." Rick Jacobus, *Inclusionary Housing: Creating and Maintaining Equitable Communities* (Cambridge MA: Lincoln Institute of Land Policy, 2015, p. 35).
18. Overviews of these models and mechanisms can be found in John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing* (Montclair NJ: National Housing Institute, 2006); and Jarrid Green, *Community Control of Land and Housing* (Washington DC: Democracy Collaborative, 2018).
19. That is not to say CLTs ignore the more typical concerns of "sustainable development." Just the opposite. The longer time horizon of the "developer that doesn't go away" makes CLTs more receptive to environmental issues and more attentive to installing durable materials and energy efficient systems than developers who build and bolt.

20. Quote by Devika Goetschius, Executive Director of the Housing Land Trust of Sonoma County, in Emily Thaden and John Emmeus Davis, “Stewardship Works,” *Shelterforce* (December 24, 2010). Available at: https://shelterforce.org/2010/12/24/stewardship_works/
21. If the home does go into foreclosure and the lender sells to a buyer that is not a low-income or moderate-income household, the CLT has the option (via the ground lease) of charging that upper-income homebuyer a market-rate ground rent.
22. See, for example, Gharad Bryan, Dean Karlan, & Scott Nelson, “Commitment Devices,” *2 Annual Review of Economics* 2 (2010); and Colin Camerer, Samuel Issacharoff, George Loewenstein, Ted O’Donoghue, & Matthew Rabin, “Regulation for Conservatives: Behavioral Economics and the Case for ‘Asymmetric Paternalism’” *University of Pennsylvania Law Review* 151 (2003).
23. Andre Gorz, *Strategy for Labor: A Radical Proposal* (Boston MA: Beacon Press, 1964).
24. James Meehan, “Reinventing Real Estate: The Community Land Trust as a Social Invention in Affordable Housing,” *Journal of Applied Social Science* 20 (2013, p. 113).
25. From the earliest days of the CLT, its advocates have wrestled with the question of exactly what these “legitimate” interests might be. A seminal discussion of this issue can be found in Institute for Community Economics, *The Community Land Trust Handbook* (Emmaus PA: Rodale Press, 1982). Many other thinkers have wrestled with the same philosophical question. See: R.H. Tawney, *The Acquisitive Society* (New York: Harcourt, Brace and World, 1920); and Reinhold Niebuhr, *The Children of Light and Darkness* (New York: Charles Scribner and Sons, 1944).
26. James DeFilippis, for one, has expressed doubts about CLTs producing society-wide change. While conceding that CLTs “provide a framework for ownership that is both equitable and viable,” he notes their lack of an oppositional politics and their limited institutional reach. James DeFilippis, *Unmaking Goliath: Community Control in the Face of Global Capital* (New York: Routledge, 2004). Quote at p. 148.
27. Ulrich Beck, *Individualization: Institutionalized Individualism and Its Social and Political Consequences* (Mike Featherstone ed., 2005). Quote at pp. 190–191.
28. Erik Olin Wright, *Envisioning Real Utopias* (London: Verso, 2010).