

# Questions and Answers on Fannie Mae Policies on Community Land Trusts

October 2006

This document is intended to assist in understanding Fannie Mae's policies on community land trust properties. Please note this document does not modify the provisions of Lender Announcement 06-03 or our *Selling Guide*. For more information on our policies, please refer to the Fannie Mae *Selling Guide*, available on eFannieMae.com.

## **General Questions on Community Land Trusts**

### **What are community land trusts?**

Community land trusts are nonprofit organizations created to increase the supply of "affordable" housing in high cost areas by providing homeownership opportunities to low-income and underserved families.

Properties are acquired by the trust and the homes are sold to borrowers using standard mortgage products. The land under the houses is leased to the homeowners at very low monthly rates. This low monthly lease rate keeps the home affordable in high cost areas. To date, more than 6,000 community land trust properties have been developed across the United States according to the Institute for Community Economics (ICE).

### **Are there resale restrictions for community land trusts?**

Yes, the lease includes provisions that require the continued use of the land to assist members of the community who could not otherwise afford homeownership.

### **If the borrower is in default, does the community land trust have the right of first refusal to purchase the property?**

Yes, the terms of the right of the community land trust to purchase this property from the lender are specified in the ground lease rider.

### **How can I find out more about setting up a Community Land Trust?**

In 2006, a national organization called the CLT Network was founded that provides training resources, technical assistance, and other information to new and existing CLTs. For more information, visit their website: [www.cltnetwork.org](http://www.cltnetwork.org).

## ***Fannie Mae Policies on Community Land Trust Properties***

### **What are the requirements for a community land trust mortgage to be eligible for sale to Fannie Mae?**

The lender must confirm that—

- The community land trust or its parent organization has had at least two years of experience in successfully managing affordable housing
- A copy of an annual report or other report was provided documenting the history and successful performance of the community land trust for the most current year.
- The community land trust is using a ground lease that is based on the model document developed by the Institute of Community Economics and the borrower executed Fannie Mae Form 2100.

If the community land trust does not meet these criteria, the lender must contact Fannie Mae for specific approval.

### **Fannie Mae requires that the “community land trust or its affiliated organization has at least two years of experience in successfully managing affordable housing, which can be evidenced by an organizational resume or history that summarizes the organization’s experience in providing affordable housing.” What does that mean exactly?**

To be an eligible organization, a Community Land Trust or its umbrella or parent organization must have been in existence for at least two years and must have supported and maintained a successful housing program.

If the CLT or its umbrella organization does not meet that criteria, Fannie Mae would consider a variance to this rule if the CLT is staffed with people that have at least two years of experience in supporting and maintaining a successful housing program. Their skill set would include experience in homeownership counseling, credit counseling, pre-qualification criteria, and knowledge of the mortgage process and requirements. The staff also should be trained on working with people after they are in their new homes to make sure that they understand the responsibilities of homeownership including creating a useful budget to manage their finances. The staff should also be trained on dealing with borrowers who fall behind on their mortgage payments and the options available to assist borrowers through any financial difficulty. In these cases, the lender would need to work with its Customer Account Team to receive approval for the CLT.

### **How can a lender confirm that the ground lease is based on the model document developed by the Institute for Community Economics (ICE)?**

As noted, the CLT must use a ground lease that is based on the model document developed by the Institute of Community Economics (ICE). We recommend that the lender request that the CLT provide a copy of the model ground lease from ICE and a copy of its own ground lease. The lender should also ask that the CLT

provide a summary of any changes or modifications in its ground lease from the model. If the lender continues to have questions on this matter, it should contact its Fannie Mae Customer Account Team for further guidance.

**What are the eligibility requirements for a borrower?**

The borrower must satisfy the specific eligibility criteria established by the community land trust. Typically, the criteria are based on a percentage of the area median income established by the U.S. Department of Housing and Urban Development (HUD), such as 80 percent or lower. The borrower may also be required to be a first-time home buyer.

**What mortgages are eligible for sale to Fannie Mae?**

We will purchase mortgages secured by properties held in community land trusts, including one- or two-unit properties, eligible condominium projects, and planned unit developments. Under our policy, we will not purchase loans secured by manufactured homes, cooperative projects, or three- or four-unit properties.

**Are all Fannie Mae products eligible for this type of transaction?**

Community land trust properties are eligible for most of our Selling Guide products, including MyCommunityMortgage™ and other community lending products. Not eligible are interest-only loans, Home Keeper®, and ARMs with a fixed period of less than five years. Please note that interest only loans under MyCommunityMortgage are also not eligible.

Because Desktop Underwriter®/Desktop Originator® (DO®/DU®) cannot be used to underwrite community land trust properties, Expanded Approval® products are not eligible for this type of transaction.

**What are the requirements for a community land trust ground lease and rider?**

The trust must use a ground lease that is based on the model document developed by the Institute of Community Economics (ICE). More information is available on the ICE website at [www.ICECLT.org](http://www.ICECLT.org).

For the loan to be eligible for delivery to Fannie Mae, the Community Land Trust Ground Lease Rider (Fannie Mae Form 2100) also must be used in the transaction. The purpose of the rider is to ensure that the ground lease conforms with our guidelines for community land trust mortgages. Form 2100 (Ground Lease Rider) can be downloaded from [www.efanniemae.com](http://www.efanniemae.com).

Both the ground lease and rider must be recorded and copies included in the borrower's loan file.

**Can resale restrictions on community land trust properties on loans delivered to Fannie Mae survive foreclosure?**

No. The Fannie Mae ground lease rider stipulates that any resale restrictions must terminate at foreclosure.

**Our CLT is working with a city government that is supplying some subsidy funds for our CLT. However, they are requiring that resale restrictions survive foreclosure. How can we work with the city and still have loans on CLT properties eligible for delivery to Fannie Mae?**

The CLT could become a sponsor of resale restrictions on the property, instead of using the ground lease structure. In Selling Guide Announcement 06-03, we updated our policies to permit resale restrictions to survive foreclosure, and expanded the types of entities that could sponsor resale restrictions to include nonprofits. Since CLTs are nonprofits, they could be eligible sponsors of resale restrictions.

**Our CLT is interested in becoming a sponsor of resale restrictions since we want our resale restrictions to survive foreclosure. How does that work?**

In Selling Guide Announcement 06-03, we do permit nonprofits such as CLTs to become eligible sponsors of resale restrictions. Resale restrictions, which would be based on language in a covenant, can survive foreclosure.

As an eligible sponsor, your CLT staff would draft the covenant or other legal document that includes the terms of the resale restrictions. The borrower agrees to these restrictions when the house is transferred to him or her at closing. Please note that the transaction would be a fee simple transaction and would not involve the use of the traditional ground lease.

Please note that if resale restrictions survive foreclosure, the CLT cannot use the leasehold valuation method to determine loan to value (LTV) and must use the sales price of the house to determine LTV. Lenders, however, could possibly process loans in these transactions using Desktop Underwriter<sup>®</sup> since the lower of sales price or appraised value, not leasehold value, would be used to determine LTV.

**Our CLT wants to make changes to the Ground Lease Rider. How can we do that?**

As noted, our Selling Guide requires that the CLT Ground Lease Rider be included in any transaction on CLT properties sold to Fannie Mae. Changes to that document are not permitted.

**What is leasehold valuation for community land trusts?**

Because restrictions expire at foreclosure for these properties, lenders may base the LTV on the leasehold value of the home, which is likely to be very close to the market value. This permits the borrower to have a lower-cost loan because mortgage insurance typically is not required. The formula for the leasehold value calculation can be found in the Fannie Mae *Selling Guide*, Part XI, Chapter 312.03.

**Must the lender deliver the ground lease and rider documents to Fannie Mae?**

No. Neither the ground lease nor the rider is a required delivery document for Fannie Mae. They should be recorded and retained in the borrower's loan file.

**What is the impact on loan delivery for loans on CLT properties?**

Lenders must represent and warrant that they can properly originate, track, and service loans on community land trust properties.

There are no adverse pricing implications for loans on community land trust properties.

To deliver these loans, lenders should enter Special Feature Code 054 into Fannie Mae Whole Loan or MBS Delivery systems.

**How is mortgage insurance handled for community land trust properties?**

Lenders should follow standard practices for MI coverage. Because the LTV on these loans typically will be lower than 80 percent, most transactions will most likely not require mortgage insurance.

**What are the title insurance implications for mortgages secured by community land trust properties?**

The borrower's title insurance policy must expressly confirm—

- The recording of the community land trust ground lease and ground lease rider.
- The mortgage is a first lien on the leasehold estate and improvements.
- There are no existing mortgages or other liens on the fee estate unless permitted under the ground lease rider.
- The ground lessor's reversionary interest is subordinate to the community land trust mortgage.
- There are no related community land trust ground lease occupancy restrictions that "run with the land" and have been recorded apart from the ground lease.

**Can we use Desktop Underwriter to underwrite community land trust properties?**

No. Because the LTV is based on the leasehold valuation, which is similar to market value, loans secured by community land trust properties cannot be underwritten through DU. DU uses the lesser of the sales price or market value, which is similar to leasehold value. It cannot, therefore, support this calculation of LTV.

**How are appraisals handled for community land trust properties?**

Appraisals should be done on these properties per typical guidelines, but the appraisal should note that restrictions do not survive foreclosure. The appraisal report must contain specific language stating that the appraisal is based on leasehold value, and it is being done on the hypothetical situation that resale restrictions do not exist.

**Are refinances allowed on these mortgages?**

Yes, they are permitted up to the controlled price established by the community land trust. The lender, however, must document that the community land trust has approved the transaction and that it complies with their guidelines.

**Regarding notification, can the ground lease (which is not signed by the lender) specifically impose a notification requirement on the lender?**

Our Rider to Ground Lease document, in section E1 notes "...the Specified Mortgagee shall only be obligated to give formal legal notice of the Event of Default to the Lessor as required by the CLT Ground Lease." Since the lender typically does not sign the ground lease, the CLT may also want to consider a separate document that the lender and the CLT both sign that clearly discloses the notification requirements to the lender. That document can be drafted by the CLT and does not need Fannie Mae review or approval.

**What do I do if my program does not comply with all of the Fannie Mae guidelines?**

Speak with a local Fannie Mae lender about obtaining a variance to the guidelines. The lender will be able to advise you regarding the feasibility of the proposed variance.