



Date: June 11, 2009

To: Members of Town Council and the County Commissioners
From: Robert Dowling, Orange Community Housing and Land Trust
Re: Use of the Fannie Mae Community Land Trust Ground Lease Rider

Board of Directors

Jim Tucker

President

Mary Bratsch

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Lisa Inman

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Funding Provided by:

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Orange County

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As we recently explained to Town and County staff in a position paper, (please see attached) Orange Community Housing and Land Trust (the Home Trust) recommends using Fannie Mae's "Uniform Community Land Trust Ground Lease Rider" (the "Rider") with our ground lease, so that we can increase the number of lenders available to our homeowners and allow our homeowners the ability to refinance their homes at more favorable interest rates. The Rider accomplishes these goals by allowing the banks that finance our homeowners to sell Home Trust mortgages to Fannie Mae.

Currently the Town of Chapel Hill and Orange County provide funds to subsidize our homeowners. The use of these funds places certain restrictive covenants on the homes. These covenants mean that the banks who finance our homes must keep the loans as "in-house" or "portfolio" loans. They cannot sell them to Fannie Mae, which is customary bank practice with private sector residential mortgages. Most lenders limit the number and amount of mortgages they hold as portfolio loans, which means that some lenders will not participate in our program. Because our lenders are unable to sell the loans, we have only three local lenders that are willing to finance Home Trust properties and hold the loans as portfolio loans. None of these three lenders allow our owners to refinance their loans at market rates and benefit from lower interest rates.. As a result, land trust homeowners are unable to borrow against their equity to pay for home repairs. Therefore, this is a matter of some urgency to us and to our homeowners.

We have determined that we could work with more lenders if we use the Fannie Mae Rider. For example, almost one third of our homeowners are members of the State Employee's Credit Union, yet they cannot finance their homes through the Credit Union because the Credit Union would require use of the Rider. Other banks, such as Wells Fargo, would also be willing to lend to our homeowners if we are permitted to use the Rider.

Further, we are aware that one of our lenders may be reluctant to make portfolio loans for condominium properties. This reluctance causes us great concern as the majority of properties we will be selling in the coming years, particularly in Chapel Hill, are condominiums.

For the above reasons, we foresee that the future success of the land trust model in Orange County will require that we start using the Fannie Mae Rider with our ground lease in order to expand our lender options, ensure that we continue to have funding sources for the housing stock in our portfolio, and allow our homeowners to have access to the best possible interest rate for which they qualify.

Benefits to Home Trust Buyers

- The Rider will ensure that our buyers have increased access to mortgage financing by expanding the number of participating lenders and increasing competition for our loans.
- The Rider will give our buyers access to a wider range of loan products and allow them to leverage their existing banking relationships to receive the most favorable loan terms.
- The Rider will enable land trust homeowners to refinance their mortgage loans and reduce their monthly mortgage payments when interest rates decline.

Benefits to the Home Trust Program

- The Rider will expand the number of lenders for our homes, thereby ensuring continued access to long term mortgage financing for all our homes, including condominiums.
- By removing current barriers to owner refinancing, the Rider will make our program more attractive to buyers and more competitive with private market homeownership.
- The Rider will increase the number of potential homebuyers by allowing them to leverage their existing banking relationships to receive financing.

Risks of using the Rider

- Using the Rider will increase the risk that a land trust home could be lost in foreclosure. Currently we are able to work with our local lenders to forestall the foreclosure process when owners get into financial difficulty. When we use the Rider and loans are sold to Fannie Mae, we expect to receive only 20 days notice before a foreclosure sale.
- In the event of foreclosure, land trust homes may be more desirable to investors. Currently, the ground lease (without the Rider) prohibits renting the property, even if the home is sold at foreclosure. The Rider removes the restriction that the home must serve as a primary residence. If we use the Rider, and this restriction is removed at foreclosure, investors may compete with us to buy our properties at foreclosure. It is possible that we might lose a home in our affordable housing portfolio if we do not purchase it out of foreclosure.
- If we were to lose a home in foreclosure, or if a home were to be rented, we would be in breach of restrictive covenants we are required to record on all land trust properties that contain subsidies.

Recommendations

1. We recommend that the Town and County formally endorse our use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider. We need your endorsement because we are unable to use the Rider on properties that are encumbered with restrictive covenants.

2. In order for us to use the Rider, the County or Town must enter into a written agreement stating that if it ever succeeds to our interest under our ground lease, the County or Town and the Lessee agree to recognize one another under the terms of the Lease and the Fannie Mae Rider. In plain English, this means that the County or Town must formally agree that it will recognize the terms of the Rider should it ever inherit and become Lessor of our land trust properties.


We recommend that both the Commissioners and Council approve the County and Town entering into such an agreement and direct staff to work with the Home Trust to prepare the necessary documents.

Summary:

Land trust buyers undergo the same loan qualification and underwriting process as a private sector buyer ---they must have good credit and demonstrate sound personal financial management. However, because of our program's inability to use the Fannie Mae Rider, our homeowners are at a competitive disadvantage when it comes to choice of lender, loan program options, ability to refinance, and ability to access the limited equity they build in their homes.

In addition, the ability of the Home Trust to provide housing options in Orange County could be jeopardized if our lenders continue to tighten restrictions on our buyers. Clearly, credit availability is critically important to the success of our program.

The position paper submitted with this request provides more detailed information about the Fannie Mae Rider and how its use will enhance our ability to serve current and future Home Trust homeowners. Many other Land Trust programs throughout the country have used the Fannie Mae Rider for some time now without any significant adverse impact to their affordable housing programs. We believe that the benefits of using the Fannie Mae Rider, both to our homeowners and the larger land trust program, greatly outweigh the risks. We request that the Town Council and County Commissioners approve the use of the Fannie Mae Rider and instruct staff to draft appropriate documents to permit its use.

A handwritten signature in cursive script, reading "Robert Davolby". The signature is written in black ink and is positioned at the bottom center of the page.



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
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Date: May 9, 2009

To: Tara Fikes and Loryn Clark
From:  Robert Dowling, Orange Community Housing and Land Trust
Re: Use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider

Background about the Fannie Mae Uniform Community Land Trust Ground Lease Rider

The Community Land Trust model which we use in Orange County is part of a larger model and movement in use throughout the United States. There are currently over 200 Community Land Trusts (CLTs) operating in 33 states throughout the country. All of these CLTs create permanently affordable homeownership opportunities by using a ground lease and selling the homes as "leasehold estates" rather transferring fee simple title to the property.

Because the leasehold estate form of homeownership is unusual in the United States, it has been somewhat difficult for CLTs to find lenders who are willing to make mortgage loans for CLT leasehold homes. In the past, the greatest roadblock to lender comfort with CLTs was the fact the Fannie Mae would not buy mortgage loans made against CLT homes. This meant that lenders had to "shelve" these loans, or hold them in house until the loan was paid off or the borrower sold their house. In general, banks do not like to shelve loans; they much prefer to sell them on the "secondary mortgage market", which in most cases means selling them to Fannie Mae.

In 2002, Fannie Mae solved this problem for CLTs by releasing the "Uniform Community Land Trust Ground Lease Rider". When a CLT attaches this rider to its ground lease, it adjusts the terms of the ground lease so that they are acceptable to Fannie Mae. Fannie Mae will then buy mortgage loans which include the Fannie Mae Rider. On a national level, the Fannie Mae Rider has greatly increased the numbers of lenders willing to originate loans for CLT homes.

Mortgage Financing Situation for our CLT Homes in Orange County

Since we began using the CLT model here in Orange County, we have been fortunate to have the support of a few banks that have been willing to originate and shelve loans for our land trust homes. Over time, Suntrust, RBC, Harrington Bank, and BB&T have all made portfolio loans to our buyers. However, Suntrust, once our main lender, stopped making loans for our program two years ago, after we declined to begin the use of the Fannie Mae Rider so that the loans could be sold. The other banks we work with have indicated that our financing options are limited because we do not yet use the Rider. For instance, none of these banks will re-finance our owners at a preferable interest rate unless we use the Rider. This has put our Land Trust homeowners at a significant disadvantage to private market owners who have benefitted from recent low interest rates. Also, Harrington Bank has now requested that our buyers make a substantial cash down payment in order to get portfolio loans. Most of our buyers can't meet this requirement.

As banks nationwide continue to increase restrictions on financing, we are concerned that mortgage options for our buyers could become very limited. Therefore, we foresee that the future success of the land trust model in Orange County will require that we start using the Fannie Mae Rider with our ground lease. Since the Rider will allow banks to sell our loans and divest themselves of risk, we foresee that it will substantially increase the number of lenders willing to work with our buyers.

Benefits and Risks of Using the Fannie Mae Rider

While there are several benefits to be had from using the Rider, there are also increased risks of losing Land Trust homes in foreclosure situations. We recognize that local governments will want to weigh the benefits against the risks in making a decision about whether we can use the Rider with government subsidized homes. We foresee that using the Rider will bring us the following benefits:

- 1. The Rider will Ensure our Clients Long Term Access to Mortgage Financing:** Using the Rider will ensure that Land Trust homebuyers will be able to obtain mortgage financing over the long run—not just while local banks are willing to originate and hold land trust loans.
- 2. The Rider will Give Our Clients Access to a Wider Range of Lenders:** Currently three banks provide mortgage loans for our buyers. This limited pool of lenders restricts the ability of land trust buyers to obtain the most competitive rates. Several other banks have indicated that they would be interested in working with us if we use the Rider, including Suntrust, Bank of America, and Wachovia. Using the Rider will create new options for our buyers.
- 3. The Rider will give our Clients Access to a Wider Range of Loan Products from Each Lender:** Currently our buyers may only use the in-house loan program that is offered to each lender. Loan officers told us that they could offer a broader range of first

time homebuyer products to our buyers if we use the rider. This will help assemble the best loan package possible for each individual buyer's situation.

- 4. The Rider will Enable Land Trust Homeowners to Refinance Their Mortgage Loans:** Our lenders will not refinance land trust mortgages unless we use the Rider. This is a major disadvantage to our homeowners, particularly as land trust homes age and require repair and replacement work.
- 5. The Rider Will Enable Some Lenders to Offer Better Interest Rates or Loan Terms to Our Buyers:** Currently smaller banks must charge our buyers a higher-than-market interest rate for 30 year fixed mortgages, because they must hold the loans and therefore face "rate risk, the risk that interest rates will rise. By using the Rider, lenders will be able to offer more competitive mortgage rates.

And we foresee that using the Rider will create the following risks:

- 1 The Rider Will Reduce The Amount Of Notice We Receive Before A Home Goes Into Foreclosure:** Currently, banks that have originated and hold land trust loans know that they should call us if a land trust homeowner defaults on their loan. If the loans are sold to Fannie Mae, then we will receive notice of the default much later in the process, when a lender is moving towards foreclosure and discovers the "request for notice of foreclosure sale" that we will record against our properties.
- 2. If a Land Trust Home is Sold At Foreclosure, The Rider will Remove our Lease's Provision that the Home May Not be Used as a Rental Property.** Currently, if a land trust home is sold at foreclosure, our lease's restrictions regarding buyer eligibility and the price at which the home may be sold will cease to be in effect. If we use the Rider and a home is sold at foreclosure, then our lease's restrictions against renting the property will also cease to be in effect.
- 3. When Land Trust Mortgage Loans Are Sold Rather Than Shelved By Banks, We Will Lose Our Local Connection To The Loans:** We prefer to have a direct relationship with banks that hold land trust mortgages. This will not be possible when, through use of the Rider, loans are sold to lenders based outside our community.

Implications of Using the Rider:

The above analysis shows that while the Fannie Mae Rider will greatly increase our buyers' access to mortgage lenders and mortgage loan programs, it will also create some additional risks should a Land Trust home ever go into the foreclosure process.

The main risk is that we will generally receive less notice of the homeowner's default, and less time and flexibility in working with the lender to prevent a foreclosure or buy back the leasehold to keep it out of foreclosure. However, we will ensure that we receive notice by recording a

"request for notice of foreclosure sale" against our properties, and including a clause in our ground lease that will allow us to buy back leaseholds that face foreclosure.

The other risk is that if we use the Rider and a land trust home ages into foreclosure, our lease's restrictions against renting the home would no longer be in effect after the foreclosure. The removal of this restriction might conceivably make the home more attractive to investors, who could buy the leasehold and use the Land Trust home as a rental property.

Impact on the Restrictive Covenants of Local Governments

The restrictive covenants that the Town of Chapel Hill and Orange County record against Land Trust properties make both governments successors to the Land Trust's rights under the lease. Therefore, it is important for the local governments to understand how using the Rider will change the terms of the lease.

Under the terms of our current ground lease: If a land trust home goes into foreclosure, the lender may sell it to any buyer at any price. In other words, the ground lease's buyer restrictions and resale price restrictions are removed. Lenders require this provision, because they do not want to be restricted when dealing with a foreclosure. The only restriction which remains in place in a foreclosure is the restriction against renting the property. We believe that restriction will discourage investors from bidding on land trust properties.

Under the terms of the Fannie Mae Rider: If the Fannie Mae Rider is used with our ground lease, our lease's buyer restrictions and resale price restrictions would still be removed for homes sold at foreclosure. In addition, our lease's restrictions against renting the home would also be removed at foreclosure. These terms would make the home more attractive to investors, who could buy the leasehold and use the Land Trust home as a rental property. The Land Trust might face more competition when it tries to buy the leasehold back at a foreclosure auction.

In summary, under our current ground lease there is some risk that a Land Trust home could lose its affordability restrictions through a foreclosure. Using the Fannie Mae Rider may increase that risk to some extent, by removing rental restrictions and making the property more attractive to investors. However, in either case it is important for the Land Trust to be prepared to purchase homes to save them from foreclosure.

Need for Funds to Save Homes in Foreclosure

When a Land Trust homeowner experiences a financial crisis, we make every effort to help that homeowner avoid foreclosure. However, if an owner's financial crisis cannot be resolved, the Land Trust should be prepared to buy back the leasehold before it goes into foreclosure. Our lease gives us the right to receive 20 days notice before any foreclosure sale, and buy back the leasehold before the sale. These rights will remain in place after we start using the Rider. This buy-back provision should enable us to 'save' every home from auction – providing we have the necessary funds to pay off the lender.

As a non-profit organization, the Land Trust may not have ready funds available to act quickly in foreclosure circumstances. A government sponsored revolving loan fund could provide an important security net, insuring our ability to act quickly and repurchase homes prior to a foreclosure auction.

Recommendations

1. The Land Trust recommends that the local governments of the HOME consortium formally endorse the Land Trust's use of the Fannie Mae Uniform Community Land Trust Ground Lease Rider, acknowledging that this rider will change the terms of our ground lease.
2. The Land Trust recommends that one or more of the local governments establish a revolving loan fund that would enable the Land Trust to recapture homes and avoid foreclosure. The loan fund should accommodate the purchase of more than one property simultaneously.