Community and Economic Development in North Carolina and Beyond Blog: Taxation of Affordable Housing in Community Land Trusts

By Tyler Mulligan

Article: https://ced.sog.unc.edu/taxation-of-affordable-housing-in-community-land-trusts/

This entry was posted on December 23, 2009 and is filed under Built Assets & Housing, Community Development

Imagine that you own a home, but not the land on which it sits. You're a tenant on the land, subject to a 99-year ground lease. As a condition of the ground lease, you are permitted to sell your home only to a household earning less than the community's median wage, and the ground lease sets a maximum sales price to ensure that the home is affordable to that household. Just down the street, similar homes are selling for considerably more than your price restriction allows. That fact doesn't bother you, because you knew the terms when you bought the place. Even with the price restrictions, you will earn some equity upon resale, and besides, you got a great deal when you bought it.

Now the tax assessor visits. Should your price-restricted home be valued in the same way as the market-rate home down the street, or should the assessor take your price restriction into consideration? That is the question addressed by the General Assembly in **S.L. 2009-481**.

Before looking at the General Assembly's response, some background is helpful. The preceding scenario describes the **community land trust (CLT) model** for affordable housing. Under this model, a nonprofit corporation obtains ownership of a parcel of land and constructs a house on that land. It then *leases* the land (typically through a very inexpensive 99-year ground lease) and *sells* the improvements to a household earning less than the area's median wage. The house price is affordable because land costs are essentially excluded from the price. Sometimes a subordinated lien is recorded on the property to document the implicit subsidy represented by the reduced price to the buyer.

Years later, when the owner attempts to sell the CLT house, the terms of the ground lease will require the owner to sell the house back to the CLT nonprofit corporation or to a qualifying low- or moderate-income household. The sale price, determined by a formula in the ground lease, is designed to provide some equity to the owner without sacrificing affordability for the next buyer. This mechanism preserves the implicit subsidy and allows the CLT house to remain affordable from sale to sale over the years.

The CLT model attempts to balance the opposing goals of maintaining the long-term affordability of CLT homes (by restricting the price at each resale) and building some equity for low- and moderate-income households during their tenure in CLT homes. Interestingly, the model has so far weathered the housing crisis fairly well, despite the fact that CLT homes are generally owned by households with low or moderate incomes. A **February 2009 survey by the Lincoln Institute of Land Policy** found that CLT homes experienced a significantly lower foreclosure rate in 2008 than market-rate homes.

One nagging problem for CLT homeowners in North Carolina has been valuation for property tax purposes. As North Carolina has grown, home prices have steadily increased. When CLT homes are located in resurgent neighborhoods where home prices are soaring, assessors have been faced with the question of whether to consider CLT price restrictions when assessing the value of CLT homes. The scenario described at the beginning of this post is not uncommon for CLT properties in North Carolina. Arguably, it has been within the discretion of the assessor to determine whether or not to consider the price restrictions when assessing the value of a CLT home (the legal analysis regarding that discretion is a subject that goes well beyond the scope of this post).

To settle the question, the General Assembly enacted **S.L. 2009-481**, which is effective for tax years beginning on or after July 1, 2010. Under the law, assessors are directed to take price restrictions into account when assessing the value of CLT homes. Furthermore, in calculating the value of CLT property, the implicit subsidy (called a "silent mortgage" in the act) is not added to the price-restricted value of the property.

To qualify as a CLT property under the act, the land must be owned by a 501(c)(3) nonprofit housing development entity. Improvements on the property must be transferred subject to a ground lease of at least 99 years, and the nonprofit agency

Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved.

must retain some interest in the property following any such transfer (usually through the ground lease). The ground lease must include resale restrictions to ensure that the property may be transferred only to qualifying households (those earning the median wage or less) or back to the nonprofit entity.

As this legislation was developed, I was asked to be involved in its drafting and to consult with interested parties. One of the goals was to ensure that the legislation would apply to existing CLT properties in North Carolina (examples of which are seen **here** and **here**), while remaining flexible enough to accommodate new CLT models which might emerge in the future. Did the legislation accomplish that goal?

This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919.966.4119; or fax 919.962.2707.